

1 CAUSE NO. F07-50318-M

2 THE STATE OF TEXAS * IN THE DISTRICT COURT
3 vs. * 194TH JUDICIAL DISTRICT
4 WESLEY LYNN RUIZ * DALLAS COUNTY, TEXAS

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REPORTER'S RECORD

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VOIR DIRE EXAMINATION

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Volume 36 of 59 Volume(s)

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BE IT REMEMBERED THAT on this the 12th day of March,
20 A.D., 2008, the above-styled and -numbered cause(s) came on for
21 hearing before the HONORABLE ERNEST B. WHITE, III of the 194th
22 Judicial District Court of Dallas County, State of Texas, the
23 following is a true and correct transcription of the
24 proceedings had, to-wit:

25

(Proceedings Reported by Computerized Machine Shorthand)

*Belinda G. Baraka, Official Court Reporter
214-653-5803*

A P P E A R A N C E S

3

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FOR THE DEFENDANT

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*Belinda G. Baraka, Official Court Reporter
214-653-5803*

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1 PROCEEDINGS

2 (March 12, 2008)

3 THE BAILIFF: All rise for the juror.

4 (Prospective juror entered the courtroom.)

5 THE COURT: You may be seated.

6 Good morning Mr. Gauge?

7 PROSPECTIVE JUROR: Good morning.

8 THE COURT: How are you doing today?

9 PROSPECTIVE JUROR: Great.

10 THE COURT: The attorneys have some questions
11 to ask you concerning your qualifications as a juror in this
12 case. There aren't any right or wrong responses to the
13 questions. They are merely trying to see how you feel about
14 certain issues.

15 What says the State?

16 MS. HANDLEY: The State is ready, Your Honor.

17 May it please the Court.

18 JAMES GAGE

19 was called as a prospective juror, after having been
20 previously sworn by the Court, testified under oath as
21 follows:22 VOIR DIRECT EXAMINATION

23 BY MS. HANDLEY:

24 Good morning, Mr. Gage, appreciate you being here to talk
25 to us. My name is Andrea Handley. I work with Marshall1 McCallum and Andy Beach. We are all Assistant District
2 Attorneys, and we are in charge of selecting the jury for this
3 particular case.4 To my left is Karo Johnson and Paul Brauchle. They are
5 defense attorneys here in Dallas, and they represent the
6 defendant seated at the end of the table, Wesley Ruiz.

7 THE DEFENDANT: Good morning.

8 PROSPECTIVE JUROR: Good morning.

9 MS. HANDLEY: Mr. Gage, let me tell you what we
10 are doing here. As you recall we took weeks of bringing down
11 people to come in this courtroom and fill out this 18-page
12 questionnaire in anticipation of selecting a jury. Since that
13 time, believe it or not, we have read all those
14 questionnaires. We have gone through and we pulled out a
15 select number of people based on their answers and
16 representation to bring down and talk to now one-on-one about
17 the death penalty. Feel you out a little bit more about how
18 you feel about it, talk to you about the criminal justice
19 system and specifically how exactly a death-penalty case
20 works.

21 PROSPECTIVE JUROR: Uh-huh.

22 MS. HANDLEY: What is important today, Mr. Gage,
23 is your opinion. I think it is fair to say that I and my
24 colleagues as representatives of the State, how we feel about
25 this case, what we think should happen is entirely different

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1 from their feelings on this side of the courtroom over here.
2 That and a buck fifty will get you a cup of coffee downstairs.
3 What we feel today is not important what Mr. Gage feels today.
4 Obviously there are no right or wrong answers. We don't want
5 you to tell us something you think we need to hear, okay?

6 PROSPECTIVE JUROR: Okay.

7 MS. HANDLEY: And I think you can appreciate the
8 seriousness of this case, it doesn't get anymore serious than
9 life or death?

10 PROSPECTIVE JUROR: No, it doesn't.

11 MS. HANDLEY: And I can see that you already
12 look thoughtful about that, and your mind is in the right
13 place.

14 I think you have served before on a jury?

15 PROSPECTIVE JUROR: Yes, I have.

16 MS. HANDLEY: You have had an opportunity to
17 read over the questionnaire back there, sir?

18 PROSPECTIVE JUROR: Yes, I did.

19 MS. HANDLEY: Would you change anything, if you
20 had to fill it out, would you change anything, expand on
21 anything, I know we put you on the spot, put you in that
22 uncomfortable chair and ask you to fill it out. Probably not
23 the best environment to really get your feelings on it.

24 Anything you want to add to that or tell us about?

25 PROSPECTIVE JUROR: Only one thing, I think the

1 questionnaire was very intense, it became quite tedious toward
2 the end. I reviewed it fairly carefully this morning, I think
3 my general opinion that I put down there has not changed. I
4 did notice that I was a little harsh toward attorneys.

5 MS. HANDLEY: That's --

6 PROSPECTIVE JUROR: And I begin to realize this
7 morning, we are dealing with a criminal case and not a civil
8 case. And I guess I watch too much Denny Crane. I apologize
9 to the defense lawyers for my comment there.10 MS. HANDLEY: I can assure you that they have
11 been called worse probably by me. No, that's fine?12 PROSPECTIVE JUROR: Other than that, I think I
13 am pretty good with that.14 MS. HANDLEY: Okay. Great then. And I will
15 tell you, Mr. Gage, reading from your questionnaire, and I
16 appreciate your comments there about attorneys, but reading
17 from your questionnaire, one of the reasons we brought you18 down is because we think you are kind of middle of the road.
19 If you were a person who said anybody who ever commits a
20 murder ought to be put to death, you wouldn't be sitting here
21 today. You would be too extreme. If you were a person who
22 said I could never assess the death penalty, couldn't do it,
23 you wouldn't be here today. We are looking for individuals
24 who kind of have an appreciation where it is not an easy black
25 or white issue, and that everything needs to be taken into

1 account in assessing the evidence in a case like this. And in
 2 particular in coming up to your conclusion as to whether or
 3 not a life sentence without parole or a death sentence is more
 4 appropriate.

5 PROSPECTIVE JUROR: Absolutely. It is various
 6 shades of gray.

7 MS. HANDLEY: Yes, sir, it is.

8 PROSPECTIVE JUROR: I am an engineer, and for
 9 engineers, I prefer black or white. But certainly in cases
 10 like this.

11 MS. HANDLEY: It won't be like that. I don't
 12 know it will be like that for you. It is something that you
 13 have to get through those shades of gray.

14 Have you always felt this way about the death penalty.

15 Was there one particular event that shaped your opinion?

16 PROSPECTIVE JUROR: No. I think I always felt
 17 that the death penalty is absolutely justified in certain
 18 cases. But so many extenuating circumstances, you really have
 19 to judge each case depending, you know on the circumstances.

20 MS. HANDLEY: And I think it is fair to say that
 21 you hit the nail on the head. It is always a case-by-case
 22 situation. It never neatly fits into one category or another.
 23 Let me just tell you a little bit more just so we can again
 24 make sure we are all on the same sheet of music here.

25 I think you get a good feel, you know, we have one goal

1 in mind here as representatives of the State, Mr. Gage, so
 2 there is no mistake about it, our single goal in this case is
 3 not only receive a conviction of finding the defendant guilty
 4 of capital murder, but to ultimately see him strapped to a
 5 gurney someday in Huntsville, Texas receiving a lethal
 6 injection. That's our goal just so you know that we are not
 7 going to change our mind and that we are serious about that.
 8 That is where we are coming from today and will until the
 9 ultimate conclusion of this case.

10 If that happens, Mr. Gage, if we receive that conviction
 11 and that assessment of the death penalty, what will happen is
 12 the defendant will be transferred out to Livingston, Texas,
 13 that's out in East Texas near Huntsville. Have you ever been
 14 out there?

15 PROSPECTIVE JUROR: I was born and raised in
 16 East Texas.

17 MS. HANDLEY: What part?

18 PROSPECTIVE JUROR: Cartage.

19 MS. HANDLEY: Did you ever take any kind of tour
 20 our walk through Huntsville?

21 PROSPECTIVE JUROR: No. I have been by.

22 MS. HANDLEY: And you are probably familiar that
 23 Huntsville is a town dedicated to the study of criminal
 24 justice and housing of inmates and where we carry out our
 25 executions. Given a death penalty for the defendant, that's

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1 where he is going to be housed there, Livingston, Texas, sits
 2 outside of Huntsville, until a date that is set by the Judge.
 3 He sits there, the day before actually, he will be transferred
 4 from Livingston, Texas to downtown Huntsville, Texas. There
 5 is an old prison there called the Walls Unit, that's where
 6 they carry out the execution.

7 He will be put in an isolated cell, close proximity to
 8 that death chamber on the day before. The day of his
 9 execution, he will have one last opportunity to have
 10 visitation with family, spiritual advise sore if he so
 11 incline. But he will get that one last visit. He will also
 12 get that famous last meal that you sometimes hear about on TV
 13 and movies. And as long as what he wants, as long as it is on
 14 the menu for TDC.

15 He will sit there and wait until six o'clock at night,
 16 because that's when we carry out our actual execution. Come
 17 that time, Mr. Gage, there are going to be some individuals
 18 that are going to take him from that isolated cell down the
 19 narrow hallway to the death chamber. Whether he goes
 20 voluntarily or kicking and screaming, he is going to go,
 21 that's what these people do for a living is to insure the
 22 delivery of him into that room. He will be taken into that
 23 room. It is a small room, very industrial and cold and
 24 sterile. And in the middle of it is a gurney, a hospital bed.
 25 And they will strap him down to that gurney, again whether he

1 likes it or not.

2 In that room, Mr. Gage, there are also two windows on the
 3 side and they have curtains over them. And after he is
 4 strapped down, these curtains will open up. And on one side,
 5 he can have five representatives from his family or his
 6 lawyer, whoever he chooses. On the other side, there are
 7 going to be five representatives from the victim's family.
 8 And they will be able to sit there and watch the defendant at
 9 that time.

10 He will be given a chance to make the last statement that
 11 we always hear about. And I am sure you can imagine many
 12 thing have been said over the many years that this has been
 13 going on. Everything from I'm sorry for what I have done to I
 14 want everybody to know that you are killing an innocent man.
 15 Anything can be said at that point. But regardless of what he
 16 says, it is going to happen.

17 When he is strapped down, there is an individual that
 18 will put an intravenous line into his arm and then strap his
 19 arm down. After he has finished making that last statement,
 20 the warden is going to give a nod to somebody, he is going
 21 start to hit a series of buttons, designed to do three things,
 22 the first thing – chemical starts to flow into his arm. The
 23 first thing it does is sedates him. Knocks him out so he
 24 can't move. The second thing that happens is it collapses his
 25 lungs so he can no longer breathe. Finally, the third thing

1 is designed to do, it ceases and stops his heart. These
 2 chemicals flow, six, eight seconds, as long as it takes until
 3 the doctor pronounces him dead.

4 I don't walk you through that to be morbid. But we are
 5 in a sterile courtroom right now and we are all being
 6 relatively friendly to each other, to tell you that to put in
 7 your mind the picture of what we are asking you to play a part
 8 in?

9 PROSPECTIVE JUROR: I understand, you painted
 10 a very graphic picture.

11 MS. HANDLEY: Okay. Good then. Knowing that,
 12 having that graphic picture, sir, and knowing your feelings on
 13 the death penalty and what you are and are not capable of, do
 14 you believe that you are the kind of person that can take part
 15 in a process such as that. We are not talking about the
 16 execution of a fictional character, but a man who is seated
 17 about 30 feet away from you?

18 PROSPECTIVE JUROR: Yes, I can.

19 MS. HANDLEY: Okay. And again, I appreciate you
 20 being thoughtful about that. I will tell you of the people
 21 who have already been selected, nobody has been entirely
 22 comfortable with the thought. And if you were, I think it
 23 would kind of give us all a red flag. So I appreciate that.

24 Let me go on and talk to you a little bit about the
 25 process. About the laws that apply in this criminal case.

1 And then more particularly what applies in a death-penalty
 2 case.

3 We had asked your opinion as to what crimes you thought
 4 the death penalty should be available as an option. And you
 5 had put down in your questionnaire there, first degree,
 6 intentional premeditated, fully cognizance of action. I will
 7 tell you that the death penalty is not an available option for
 8 all murder cases. It is actually a very select number of
 9 cases to which the jury has an option. Again, it is always an
 10 option. It is never automatic.

11 The types of cases where it is an option is for example
 12 the murder of a police officer in the line of duty. The
 13 murder of a child six years of age or younger. The murder of
 14 an individual 65 years of age or older. The murder of two or
 15 more people during the same criminal episode. You hear about
 16 serial criminals.

17 The most classic example we often see is a situation
 18 where the individual goes into a convenience store with intent
 19 of robbing the store and in the process murders the clerk. So
 20 a murder during the commission of a felony offense is also a
 21 crime to which the death penalty could be an option. Robbery,
 22 murder during rape, murder during kidnapping, those are the
 23 types of crimes, murder of a prison guard during an attempted
 24 escape from prison, those are the crimes that would become an
 25 option to the jury.

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1 If I were sitting here right now, Mr. Gage, and I pulled
 2 a gun out of my briefcase and I turned to my colleague who is
 3 minding his business and just shot him in the head and blew
 4 his brains out and stood up and laughed about it and kicked
 5 his body a couple of times and danced around, I think you
 6 would agree that it is a particularly heinous murder, is it
 7 not?

8 PROSPECTIVE JUROR: I would assume. He
 9 seems like a nice guy.

10 MS. HANDLEY: And he is a nice guy. And that
 11 would be an intentional murder, Mr. Gage. But I will tell you
 12 what, the death penalty would not be an option available to
 13 the jury in my trial. I could get life imprison, but not the
 14 death penalty, because Mr. Beach at this point, he is not one
 15 of those protected class, he is not falling within that
 16 limited class of cases to which the death penalty can apply.

17 Does that make sense to you?

18 PROSPECTIVE JUROR: Yes, I think so.

19 MS. HANDLEY: If you would, let's say you are
 20 the legislature for a day and you could change the law, do you
 21 think that you would change the laws to which the death
 22 penalty is an available option for jurors?

23 PROSPECTIVE JUROR: As you have explained
 24 them, and as I understand them, no. I think I agree. I think
 25 there should be some knowledgeable group who makes those

1 decisions instead of them being made, you know, on a
 2 case-by-case, emotional-type basis.

3 MS. HANDLEY: Okay, very well then. And before
 4 I talk more specifically about the death penalty in a capital
 5 murder case, I will back up a little bit and tell you, you
 6 know we got our capital murder cases, and then we got for lack
 7 of a better word, sir, our regular murder cases. That being
 8 shooting my colleague, a regular murder case, not a capital
 9 murder case. In a capital, a jury is left with one or two
 10 choices ultimately on what they are going to do with the
 11 defendant. And that is either give him life imprison without
 12 parole or the death penalty.

13 PROSPECTIVE JUROR: So this will be our option
 14 here?

15 MS. HANDLEY: Yes. In a capital murder case,
 16 one of two things is going to happen, life imprison without
 17 parole or the death sentence. In a regular murder, and again
 18 I say regular for lack of a better word, in a regular murder,
 19 it is entirely different with respect to the change of the
 20 punishment.

21 In your particular case, sir, were you called upon to
 22 assess punishment when you sat as a juror?

23 PROSPECTIVE JUROR: Yes.

24 MS. HANDLEY: You probably remember that and you
 25 did find him guilty and assess a punishment; is that correct?

1 PROSPECTIVE JUROR: Yes, we did, yeah.
 2 MS. HANDLEY: You are ten steps ahead of the
 3 game then. You remember then after you found him guilty, the
 4 Judge gave to you a wide range of punishment to look at in
 5 assessing what to do?

6 PROSPECTIVE JUROR: Nothing personal, but it
 7 was a her.

8 MS. HANDLEY: She did, I'm sorry.

9 PROSPECTIVE JUROR: I think we had
 10 manslaughter, unintentional, we had several options from which
 11 to choose and we based that on the evidence given the trial.

12 MS. HANDLEY: Precisely. And that not being --
 13 manslaughter not being a first-degree murder, your range of
 14 punishment did not go all the way to life.

15 PROSPECTIVE JUROR: No, no.

16 MS. HANDLEY: I would imagine, because it is not
 17 a first-degree intentional murder. You found that somebody
 18 was killed recklessly in that case, I believe?

19 PROSPECTIVE JUROR: Yes.

20 MS. HANDLEY: And you understand, and I believe
 21 you already have an appreciation, you based your punishment
 22 sentence in that case on the evidence of that particular
 23 offense?

24 PROSPECTIVE JUROR: Yes.

25 MS. HANDLEY: And had you believed based on the

1 evidence, for example, that a minimum sentence was
 2 appropriate, I am sure that would have been the thing that you
 3 would have done, if you felt that was going to be done. And
 4 had you felt based on the evidence in that case that a maximum
 5 sentence was appropriate, that's what you would have done in
 6 that case.

7 PROSPECTIVE JUROR: Uh-huh.

8 MS. HANDLEY: But ultimately you gave the
 9 punishment within that range that you felt appropriate for
 10 that case?

11 PROSPECTIVE JUROR: Yes.

12 MS. HANDLEY: So I am sure you can already agree
 13 that in order to be a qualified juror, you have to base your
 14 verdict on the evidence in the case. And wherever it lands
 15 within that range of punishment, that is what you do, be it
 16 the minimum sentence or the maximum sentence?

17 PROSPECTIVE JUROR: (Nods head). So in this
 18 particular trial, will we -- will the jury --

19 MS. HANDLEY: This is going to be different.
 20 And that's just stepping back away to talk to you briefly
 21 about a regular murder. We are not talking about a regular
 22 murder in this case. If for some reason, you know, it is just
 23 to test your qualifications if that were the situation there.

24 We are talking about a capital murder, though. And I am
 25 going to go again through briefly with you the fundamental

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1 propositions of law that come to play in any criminal case.
 2 And this is probably going to sound very familiar to you. But
 3 again, tests on your qualifications to sit as a juror in this
 4 particular case. Through all criminal cases, be it theft of a
 5 loaf of bread up to capital murder, the trial that you sat on,
 6 certain rules of law came into play. I am sure that you took
 7 your oath as a juror, you agreed to follow the law, and you
 8 agreed to base your sentence on the evidence in the case and
 9 nothing else, correct?

10 PROSPECTIVE JUROR: Sure.

11 MS. HANDLEY: We as the State of Texas are
 12 obligated to find the defendant -- to prove to you the
 13 defendant is guilty beyond a reasonable doubt. We have to
 14 prove each and every element of the offense. It is set out in
 15 the indictment.

16 I think you have a copy of it right there in front of
 17 you.

18 PROSPECTIVE JUROR: Uh-huh.

19 MS. HANDLEY: And I will paraphrase for you. We
 20 are obligated to prove to you that the defendant, on or about
 21 a certain date, in Dallas County, Texas, did intentionally and
 22 knowingly cause the death of this peace officer, knew he was a
 23 peace officer in the line of duty, and he did it by shooting
 24 him with a firearm. No element is more important than the
 25 other. And we have to prove all the elements. We don't get

1 points for five out of six. We have to prove them all to you.
 2 And the Judge would instruct you what is important in
 3 recognizing that every element stands on its own and every
 4 element is just as important as the other, correct, sir? So
 5 if I fail to prove any one of those elements beyond a
 6 reasonable doubt, the Judge would instruct you that you must
 7 return a verdict of not guilty.

8 And you understand that law and that's a law that you
 9 would agree and follow also?

10 PROSPECTIVE JUROR: Yes.

11 MS. HANDLEY: And just for example, completely
 12 out there example, let's say I put my case on, I prove to you
 13 beyond a reasonable doubt that the defendant did kill and
 14 murder a police officer in the line of duty. But let's say
 15 for example I haven't offered a thread of evidence that it
 16 happened in Dallas County. But instead I showed you that it
 17 happened in Tarrant County. You agree with me, sir, that
 18 Dallas County is an essential element of the indictment, is it
 19 not?

20 PROSPECTIVE JUROR: Yes.

21 MS. HANDLEY: If I failed to prove that to you,
 22 sir, the Judge would instruct you that you must return a
 23 verdict of not guilty.

24 PROSPECTIVE JUROR: I understand.

25 MS. HANDLEY: And is that something that you

1 would and would do you would agree to follow that law?

2 PROSPECTIVE JUROR: Yes, I would.

3 MS. HANDLEY: You also recognize, I am sure,
4 that the indictment in this case is merely a piece of paper,
5 it tells me what I have to prove. It tells the defendant what
6 he is charged with. The Judge will instruct you that it is in
7 no way to be considered as a piece of evidence against the
8 defendant. You can't say where there is smoke, there is fire.
9 He was indicted, so I am going to consider that as evidence of
10 his guilt. Merely a piece of paper.

11 Is that a law that you could also follow and would agree
12 to follow in this case?

13 PROSPECTIVE JUROR: Yes.

14 MS. HANDLEY: You recognize also as a
15 representative of the State, I brought the charges, I ought to
16 have to do the proving. And that is the law. You always look
17 to this side of the table for your proof. You never look to
18 that side over there to offer anything. They could,
19 figuratively speaking, sit there and play cards if they want
20 to. I don't think they will. I know these gentleman and they
21 are very talented attorneys. But figuratively, they wouldn't
22 have to do anything, you always look to the State to bring the
23 evidence.

24 PROSPECTIVE JUROR: Until proven guilty. And
25 you have the burden of proof?

1 MS. HANDLEY: Yes, I do. And it always stays
2 here, doesn't it? And the law states that until I prove this
3 case beyond a reasonable doubt, as the defendant sits here
4 today and until I prove to you otherwise, you are to presume
5 him innocent.

6 Is that a law that you would also agree to follow?

7 PROSPECTIVE JUROR: Yes.

8 MS. HANDLEY: Proving this case to you beyond a
9 reasonable doubt. I am sure you can appreciate that's our
10 highest burden of proof in the justice system? Not shadow of
11 a doubt, not clear and convincing evidence, not preponderance
12 of the evidence, but beyond a reasonable doubt, the highest
13 burden of proof in our system. There is no definition of
14 reasonable doubt, Mr. Gage. It is whatever you think it is.
15 Some people say I have to be sure. Some people have said it
16 has to be a decision that I could sleep with knowing that I
17 have done the right thing, then I would know that you were
18 guilty beyond a reasonable doubt.

19 But let me throw it back at you and ask you what do you
20 think beyond a reasonable doubt, Mr. Gage?

21 PROSPECTIVE JUROR: You have evidence. You
22 have physical evidence. You have eyewitness evidence. You
23 have recorded evidence. And you have met all the requirements
24 as you stated earlier.

25 MS. HANDLEY: And you understand, Mr. Gage, I

23

24

1 could put anybody on that stand and they could say, you know,
2 I was there and I saw it. But your obligation as a juror as
3 you know is to assess the credibility of that witness. Just
4 because you are under oath, you know, doesn't mean that you
5 are telling the truth, does it?

6 PROSPECTIVE JUROR: That's true.

7 MS. HANDLEY: And you would agree that you are
8 going to assess the credibility of each witness as they take
9 the stand and offer proper testimony.

10 And speaking of testimony, as I am sure you are familiar
11 with, the defendant has a right not to testify in his criminal
12 trial, it's that Fifth Amendment right to remain silent. The
13 law says that if any defendant, you enjoy the right, I enjoy
14 the right, any defendant elects not to testify in a case
15 against him, that you as a juror may not use that as evidence
16 at his trial.

17 Is that a law --

18 PROSPECTIVE JUROR: No, that is his choice.

19 MS. HANDLEY: And you will agree to follow that
20 law and not hold it against him?

21 PROSPECTIVE JUROR: Uh-huh.

22 MS. HANDLEY: If I failed to prove it beyond a
23 reasonable doubt, and the defendant didn't testify, you
24 wouldn't use that to get me over my hurdle, would you?

25 PROSPECTIVE JUROR: No.

1 MS. HANDLEY: Those are propositions of law,
2 sir, that come into play in any criminal case that you may be
3 called upon to sit in. Be it theft of bread or capital murder
4 case.

5 If I present all my evidence to you and you believe I
6 have proved my case beyond a reasonable doubt, then you are
7 obligated as a juror so return a verdict of guilty of capital
8 murder.

9 Is that something that you would also do, sir?

10 PROSPECTIVE JUROR: Yes, I could.

11 MS. HANDLEY: Let's talk about the second phase
12 of the trial. Now, in a capital murder case, entirely
13 different from a capital murder case that you sat on or a
14 regular murder, if you will. A lot of people come in here
15 believing that if an individual is found guilty of capital
16 murder, that means that they will automatically receive a
17 sentence of death, or the death penalty. And in fact, it does
18 not work that way at all. We again call upon our jurors to
19 look at the information in the case. Look at the facts and
20 determine whether or not that is the appropriate thing to do
21 for this particular case. What you don't do is, is you don't
22 go back there and discuss with the other jurors what do we
23 think is better, life or death. That is not how you come up
24 with your ultimate verdict. Instead of what you do is you
25 answer a series of questions. And then based on the answers

1 to the questions, that will determine whether or not he
 2 receives the death penalty or whether or not he receives life
 3 imprisonment.

4 You with me so far?

5 PROSPECTIVE JUROR: How are these question,
 6 are we given a form, each juror is --

7 MS. HANDLEY: You are absolutely given that
 8 particular question in writing. And you sit down collectively
 9 and discuss and deliberate on what the answer to that question
 10 is?

11 PROSPECTIVE JUROR: So we do this together as
 12 a jury?

13 MS. HANDLEY: Yes, sir, you do. You always do
 14 your deliberations together. But you get there by answering
 15 questions, and that will ultimately determine what happens.

16 Now, understanding again he is guilty of capital murder.
 17 And again there are only two potential verdicts, correct?

18 PROSPECTIVE JUROR: Okay.

19 MS. HANDLEY: Life imprison without parole or
 20 the death penalty?

21 PROSPECTIVE JUROR: But we are definitely given
 22 the option if we fine the defendant guilty of the charge, then
 23 it is up to the jury to make the decision between death
 24 sentence and life imprisonment?

25 MS. HANDLEY: That's correct. It will only be

1 one of two choices what is going to happen. And the way you
 2 get to the decision is by answering questions and I will talk
 3 to you about that in a second.

4 PROSPECTIVE JUROR: Good.

5 MS. HANDLEY: The best this defendant is ever
 6 going to get, sir, is what?

7 PROSPECTIVE JUROR: Life imprison.

8 MS. HANDLEY: Correct. That's the best he is
 9 ever going to get.

10 PROSPECTIVE JUROR: If he is found guilty.

11 MS. HANDLEY: If he is found guilty, yes, sir.

12 And we are talking under the assumption that he has been found
 13 guilty, okay. The best he is ever going to get is life
 14 imprison. As I said, the way it can be elevated to death is
 15 on whether or not we bring you sufficient evidence and whether
 16 or not we can prove to you beyond a reasonable doubt that he
 17 ought to receive death. That's our obligation.

18 PROSPECTIVE JUROR: Good.

19 MS. HANDLEY: Because as you can fully
 20 appreciate we are asking a whole lot of you.

21 PROSPECTIVE JUROR: I am going to ask a whole
 22 lot of you to prove that.

23 MS. HANDLEY: And you should. If we are going
 24 to ask you to take part in sentencing somebody to death, then
 25 we darn well ought to prove to you that it is the right thing

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1 to do for the particular case, correct?

2 PROSPECTIVE JUROR: Correct.

3 MS. HANDLEY: Remember the defendant had a
 4 presumption of innocence in the first part of the trial until
 5 I proved to you beyond a reasonable doubt that he was guilty.
 6 There is another presumption now that goes into play in the
 7 second part of the trial, okay. You are to go into the second
 8 part of the trial presuming that the most appropriate thing to
 9 do is to give him life imprison. He has already earned that,
 10 right. And you are to go in presuming that it should stay at
 11 life imprison. And you continue to presume that life is the
 12 most appropriate thing to do until I prove to you beyond a
 13 reasonable doubt that it is not.

14 You with me so far?

15 PROSPECTIVE JUROR: Uh-huh.

16 MS. HANDLEY: The way we do that is by having
 17 you answer a question. And I am going to call your attention
 18 up there, see where it says special issue. Go ahead and read
 19 that first one to yourself there.

20 PROSPECTIVE JUROR: (Juror complies.)

21 MS. HANDLEY: Okay. Okay. Now, we did not
 22 write that question here at the Dallas D.A.'s office or the
 23 attorneys over here. That's written by the legislature. And
 24 it is a question that you are called upon to answer as a juror
 25 in a capital murder case. And we refer to that question as

1 the future dangerousness question.

2 Would you agree with me that it is essentially asking you
 3 do you believe the defendant is going to be a future danger?

4 You think that's basically what it is asking you?

5 PROSPECTIVE JUROR: Sure.

6 MS. HANDLEY: Okay. And keeping in mind at this
 7 point, where is he going to be for the rest of his life at
 8 this point?

9 PROSPECTIVE JUROR: Which brings up a question,
 10 is he eligible for parole, if we --

11 MS. HANDLEY: It is life imprison without
 12 parole. If you are found guilty of capital murder, you will
 13 either receive life imprison without parole or you will
 14 receive the death sentence.

15 Does that answer your question?

16 PROSPECTIVE JUROR: Okay.

17 MS. HANDLEY: So going into this question on
 18 whether he is going to be a future danger to society, where is
 19 he going to be rest of his life?

20 PROSPECTIVE JUROR: Without parole.

21 MS. HANDLEY: He is going to be in prison, isn't
 22 he. And they don't give you definitions to these certain
 23 terms in these questions, sir, we have already talked about
 24 reasonable doubt, do you find from the evidence beyond a
 25 reasonable doubt, and we know that goes to my burden of proof,

1 correct?
 2 PROSPECTIVE JUROR: Yeah.
 3 MS. HANDLEY: That I have to prove to you that
 4 he is going to be a future danger. That there is a
 5 probability that he will commit criminal acts of violence that
 6 will constitute a continuing threat to society. When I say
 7 society, when you say society, what do you think of?
 8 PROSPECTIVE JUROR: I think of you and me and
 9 people walking around on the streets, I don't necessarily
 10 think of his prison inmates. I guess one should.
 11 MS. HANDLEY: Absolutely.
 12 PROSPECTIVE JUROR: You should.
 13 MS. HANDLEY: Our society is going to the
 14 grocery store and coming here and walking in the streets and
 15 such as that. But the rest of his life is going to be served
 16 in prison, correct. So is it fair to say that, you know, who
 17 else is in prison besides prisoners, sir?
 18 PROSPECTIVE JUROR: The guards and the
 19 warden.
 20 MS. HANDLEY: Administration, doctors, nurses,
 21 educators, people that come for visitation. Is it fair to say
 22 that it is a society in and of itself?
 23 PROSPECTIVE JUROR: I would say it is, yes.
 24 MS. HANDLEY: And would your definition of
 25 society as a whole, part of what we are in, would it be broad

1 enough to also encompass that prison could be a society within
 2 that society?
 3 PROSPECTIVE JUROR: Certainly. I see where you
 4 are going, obviously it would.
 5 MS. HANDLEY: That's where we are talking about,
 6 he is in prison now, that's his society, and we are asking you
 7 to answer the question, is there a probability that he will
 8 commit criminal acts of violence in that society?
 9 They don't define probability for you either, Mr. Gage.
 10 I think you will appreciate or agree with me that there is a
 11 difference between a possibility and a probability, would you
 12 not? Anything is possible, isn't it?
 13 PROSPECTIVE JUROR: On TV anything is possible
 14 and it happens all the time.
 15 MS. HANDLEY: As outlandish as it might sound, I
 16 could possibly win an Olympic Gold for a marathon, I can't
 17 walk up a flight of stairs without getting winded. Anything
 18 is possible.
 19 PROSPECTIVE JUROR: Sure.
 20 MS. HANDLEY: A lot of people have told us that
 21 it is more likely than not. Or it means to them greater than
 22 50 percent chance that that's what probability means to them.
 23 What would you say that probability is?
 24 PROSPECTIVE JUROR: Past history would play a
 25 big part.

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1 MS. HANDLEY: In answering that question?
 2 PROSPECTIVE JUROR: Which brings my question,
 3 I would think probability would of course being an engineer it
 4 is always a mathematical probability which doesn't apply here,
 5 so I am a little out of my comfort zone. So I would be
 6 concerned with this defendant's previous history prior to this
 7 crime and are we going to have accessibility to that.
 8 MS. HANDLEY: Right. And you are kind of
 9 getting a little bit ahead of me. And that does come into
 10 play and that is important in determining whether or not there
 11 is a probability he will do these things. But with respect to
 12 is there a probability, that's what I am filling you out on.
 13 What do you think probability means?
 14 PROSPECTIVE JUROR: It could happen, there is a
 15 mathematical chance it could happen.
 16 MS. HANDLEY: Would you agree with me that as
 17 we step back that there is a mathematical chance that anything
 18 is possible, right? Possibility is even a chance, isn't it?
 19 PROSPECTIVE JUROR: To some extent. You
 20 might look hard enough to find out that something wasn't
 21 possible.
 22 MS. HANDLEY: Sure.
 23 PROSPECTIVE JUROR: Like taxes in April is going
 24 to happen.
 25 MS. HANDLEY: Sure. With respect to something

1 being a possibility versus a probability, would you agree with
 2 me that a probability is much higher than a possibility? I
 3 see you nodding your head, yes?
 4 PROSPECTIVE JUROR: Yes.
 5 MS. HANDLEY: Does it square with you, that if I
 6 were to define it as more likely than not is what a
 7 probability is?
 8 PROSPECTIVE JUROR: No. I don't agree with
 9 that.
 10 MS. HANDLEY: Okay, what would you say?
 11 PROSPECTIVE JUROR: I would say a probability is
 12 again some percentage of possibility. It could be a
 13 10 percent probability.
 14 MS. HANDLEY: Okay.
 15 PROSPECTIVE JUROR: That the gate is going to be
 16 up when I drive out the parking lot and I won't have to pay,
 17 but that is not greater than 50 percent. To me probability is
 18 defined by anything from 1 percent up to 99 percent. Not
 19 greater than 50 percent.
 20 MS. HANDLEY: More than a possibility but in
 21 terms of, you know, you putting a number on it, you are saying
 22 that you still feel like --
 23 PROSPECTIVE JUROR: If you say probability of
 24 flipping a coin heads or tails, then certainly the probability
 25 of heads would be greater than 50 percent. If you say getting

1 one coin to say out of a million, then that is pretty low.
 2 MS. HANDLEY: Yes. I will tell you, Mr. Gage,
 3 the law says that a probability must be considered more than
 4 50 percent?
 5 PROSPECTIVE JUROR: Okay. So it is basically a
 6 yes and no it will happen, it will not happen a particular
 7 thing.
 8 MS. HANDLEY: The law says that a probability is
 9 greater than 50 percent. Can you -- I mean squaring with
 10 yourself, can you follow that law and give the definition --
 11 define probability then according to law as greater than
 12 50 percent?
 13 PROSPECTIVE JUROR: Yes, I can.
 14 MS. HANDLEY: So you could follow that law and
 15 find it greater than 50 percent, okay. Probability the
 16 defendant would commit criminal acts of violence. They do not
 17 define for you, sir, what are criminal acts of violence. They
 18 won't say that he will commit another murder. They don't say
 19 that, do you find that he will probably commit a robbery. He
 20 will probably commit an assault. He will probably commit a
 21 kidnapping. They don't define that for you, again they leave
 22 that for you to decide what is a criminal acts of violence.
 23 Let's say for example Mr. McCallum sitting here minding
 24 his business, let's say I stand up, cold cocked him in the
 25 face and knock him tail over end out of his chair; would you

1 agree with me that that might be considered a criminal act of
 2 violence?
 3 PROSPECTIVE JUROR: I suppose so.
 4 MS. HANDLEY: And you are kind of laughing, I
 5 suppose so?
 6 PROSPECTIVE JUROR: That's borderline, that
 7 happens every night in every bar in Dallas. And in most cases
 8 it is not -- it's not considered a criminal act.
 9 MS. HANDLEY: Would you consider it violent?
 10 PROSPECTIVE JUROR: I consider it very violent,
 11 yes.
 12 MS. HANDLEY: Would you consider it an assault?
 13 PROSPECTIVE JUROR: Possibly, like you said,
 14 depending on the circumstances.
 15 MS. HANDLEY: Depending on the circumstances.
 16 And again he is just sitting there minding his own business.
 17 He hasn't started trash talking me in a bar.
 18 PROSPECTIVE JUROR: If it is not your husband,
 19 then it is assault.
 20 MS. HANDLEY: Okay. But you are saying that
 21 seems to you that that is not really -- it is kind of iffy
 22 maybe for you?
 23 PROSPECTIVE JUROR: You know, I would, I guess
 24 looking at pragmatically, you say this particular person is in
 25 jail and he gets in a little tussle with one of the other

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1 inmates and knocks him down, I wouldn't consider that to be a
 2 criminal act of violence.
 3 MS. HANDLEY: You used the term tussle. Let me
 4 go back to what you did bring up. In order to answer that
 5 question, presumably I am going to be bringing you some
 6 evidence that you can consider to make your decision on that
 7 question.
 8 PROSPECTIVE JUROR: Uh-huh.
 9 MS. HANDLEY: You know, that's my burden of
 10 proof to prove to you that the answer to that question is
 11 "yes", because I tell you, Mr. Gage, if you answer that
 12 question, "yes", he is a future danger to society, his
 13 society, then it will elevate that life sentence up to a death
 14 sentence?
 15 PROSPECTIVE JUROR: I understand.
 16 MS. HANDLEY: So that's that question we are
 17 talking about here. And I have to prove to you the answer to
 18 that question is "yes", and I have to prove that to you beyond
 19 a reasonable doubt. And I have to be the one who brings you
 20 evidence to prove that to you.
 21 So let's go back to what you were talking about, what
 22 kind of things would you need to see, hear, know in order for
 23 you to honestly and fairly answer that question, yes or no?
 24 What would you be looking for?
 25 PROSPECTIVE JUROR: I would be looking for the

1 evidence in this particular crime and how this particular
 2 crime was committed and in -- you know the violence involved.
 3 The things that the accused did, you know, during this violent
 4 act. And I would certainly want to know history of previous
 5 violent acts, behavior, actions.
 6 MS. HANDLEY: Okay.
 7 PROSPECTIVE JUROR: I would want to understand
 8 who is this person and you know what is his history. And how
 9 has he behaved throughout his life.
 10 MS. HANDLEY: Sure. Is this just a one-time
 11 anomaly or is this something that nobody is surprised that it
 12 led up to this and culminated in this murder. A lot of people
 13 have said sometimes the best predictor of future behavior
 14 might be how you have acted in the past. So you would like to
 15 know a little bit about how has he acted from the time that
 16 got him up here until the time we are going to sentence him?
 17 PROSPECTIVE JUROR: Sure.
 18 MS. HANDLEY: In answering that question, you
 19 may look at the circumstances of the offense of that capital
 20 murder, in addition to any other evidence we might bring you.
 21 In the first part of the trial, you are considering
 22 circumstances of the offense to answer the question of is he
 23 guilty of capital murder, correct?
 24 PROSPECTIVE JUROR: Uh-huh.
 25 MS. HANDLEY: Now you may consider the

1 circumstances of the offense to determine whether or not he is
 2 a future danger. And what is important to understand and, I
 3 just need to make sure that you are with us on this, you have
 4 already found him guilty of capital murder, so that's
 5 presumably an intentional murder, correct? The law states
 6 that you do not then automatically say, well, since he is
 7 guilty of a capital murder, then automatically the answer to
 8 this question is "yes". You know, now, you are looking at
 9 that circumstance again. But you are looking at it to decide
 10 does that mean that that question should be "yes"? Or is
 11 there any other evidence that helps me?

12 So going into that, you find him guilty of intentional
 13 murder, would you automatically find that he is a future
 14 danger to society?

15 PROSPECTIVE JUROR: No, no.

16 MS. HANDLEY: Okay.

17 PROSPECTIVE JUROR: I don't think so.
 18 MS. HANDLEY: Okay. You are wanting to look
 19 again, re-assess the crime and any other past evidence about
 20 his past in answering that question to you?

21 PROSPECTIVE JUROR: Well, I was going to
 22 comment that there are certainly cases where people's intent
 23 or people commit, you know a capital offense one time based on
 24 the situation as it exists at that moment. And it's a
 25 one-time thing.

1 MS. HANDLEY: Okay.

2 PROSPECTIVE JUROR: They haven't before and they
 3 wouldn't again.

4 MS. HANDLEY: Okay.

5 PROSPECTIVE JUROR: So we need to understand,
 6 you know the entire scenario, I think more than just the
 7 incident as it occurred.

8 MS. HANDLEY: Sure. Sure. I need to prove to
 9 you that it is not a one-time thing and in all probability
 10 there are going to be criminal acts of violence and a threat
 11 to somebody in society?

12 PROSPECTIVE JUROR: (Nods head).

13 MS. HANDLEY: If I prove that to you, Mr. Gage,
 14 if you answer that question "yes", as I told you, that that
 15 presumption of life is the appropriate thing to do. That
 16 presumption is gone now and that sentence is elevated up to a
 17 death sentence. Are you with me on that?

18 PROSPECTIVE JUROR: Okay.

19 MS. HANDLEY: You are not through answering
 20 questions, it is not entirely done. You still have to answer
 21 one more question after that.

22 PROSPECTIVE JUROR: Let me summarize this,
 23 though, what you told me. You said probability, I have to
 24 believe that there is greater than a 50 percent probability.

25 MS. HANDLEY: Yes.

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1 PROSPECTIVE JUROR: Fifty percent chance,
 2 whatever, that he will commit an act of violence, that I
 3 believe to be a criminal act of violence?

4 MS. HANDLEY: Yes, sir.

5 PROSPECTIVE JUROR: As we discussed, you
 6 know, maybe the punching match in the cafeteria or something?

7 MS. HANDLEY: Uh-huh.

8 PROSPECTIVE JUROR: May not constitute in my
 9 mind a criminal offense?

10 MS. HANDLEY: That's correct.

11 PROSPECTIVE JUROR: Okay. So you have -- you
 12 have to show me evidence that would convince me to believe
 13 greater than a 50 percent probability that he will do
 14 something pretty violent, you know, he would do a criminal
 15 type.

16 MS. HANDLEY: And pretty violent is your
 17 definition.

18 PROSPECTIVE JUROR: Is my definition.

19 MS. HANDLEY: Is that what you are saying, you
 20 are looking for something that would be pretty violent?

21 PROSPECTIVE JUROR: Yes.

22 MS. HANDLEY: What do you think would be pretty
 23 violent?

24 PROSPECTIVE JUROR: Well, back to television,
 25 stab an inmate.

1 MS. HANDLEY: Okay.

2 PROSPECTIVE JUROR: Doing anything to a guard,
 3 warden.

4 MS. HANDLEY: Okay.

5 PROSPECTIVE JUROR: Any violence there.
 6 Anything worse than you would find in the high school gym.

7 MS. HANDLEY: Okay. And that draws a pretty
 8 good picture.

9 PROSPECTIVE JUROR: Young guys get in fights and
 10 tussles. And I used the word tussle again. And you can be
 11 accused of assault for very over-rated reasons.

12 MS. HANDLEY: And sometimes there are often
 13 defenses to assaults too?

14 PROSPECTIVE JUROR: Uh-huh.

15 MS. HANDLEY: Okay.

16 PROSPECTIVE JUROR: Okay.

17 MS. HANDLEY: All right. If you answer that
 18 question yes, because you presume the answer is "no", right,
 19 but we proved it to you beyond a reasonable doubt, and you
 20 answered that question "yes", that sentence now goes up to a
 21 death sentence, okay. But you are not finished answering
 22 questions. And it is not the end of the story. You still
 23 have to answer another question. That's that second special
 24 issue. Go ahead and read that to yourself?

25 PROSPECTIVE JUROR: Let me read it again.

1 MS. HANDLEY: You get it, sometimes it takes a
 2 couple of times to read it. I think if we can say things as
 3 lawyers in 60 words versus six, we will do it, okay. And
 4 again we didn't write that question, but it is quite a
 5 mouthful. I will tell you that we often refer to that second
 6 question, Mr. Gage, as the safety-net question.

7 Let me ask you, what do you think it is asking you to
 8 decide?

9 PROSPECTIVE JUROR: I think it falls right in
 10 line with my -- my answers on the questionnaire where I really
 11 believe that to give the death sentence, it has to be a very
 12 heinous crime. It has to be, you know, not necessarily
 13 premeditated, but it has to be done with full awareness of
 14 what he was doing and violent intent and -- I don't know, I
 15 guess if you look at the circumstances of it and it's a
 16 one-time, it is a flash thing. I made some comments about
 17 being under the influence of drugs or alcohol --

18 MS. HANDLEY: Uh-huh.

19 PROSPECTIVE JUROR: -- where you really don't
 20 know what you are doing.

21 MS. HANDLEY: Uh-huh.

22 PROSPECTIVE JUROR: Those things certainly
 23 have to be taken into account in my opinion.

24 MS. HANDLEY: And I think you are headed in the
 25 right direction there, is basically what they are asking you

1 to do, Mr. Gage, is look at everything. Look at everything in
 2 the case once again. We call it the safety-net question
 3 because it is ensuring that death is really the proper thing
 4 to do. In other words, they want you to look at his
 5 character. Look at his background, look at the circumstances
 6 of the offense.

7 PROSPECTIVE JUROR: I would certainly want to do
 8 that.

9 MS. HANDLEY: Absolutely. And you must do that.
 10 You must look at everything. And it is basically telling you,
 11 sir, that if you find something in all the evidence, maybe it
 12 is his character, maybe it is something about his background,
 13 maybe it is the circumstance of the offense. As you said,
 14 maybe it is drugs or alcohol. If you think there is something
 15 there that warrants bringing that sentence of death back down
 16 to a life sentence, that is an option available to you. We
 17 call it a mitigating circumstance. And I can't tell you
 18 necessarily what would constitute a mitigating circumstance in
 19 your mind, but it has to be a sufficient mitigating
 20 circumstance. You know, in other words, you are not going to
 21 walk out of the -- this courthouse, I agree he was guilty of
 22 capital murder, and I agree he is a future danger to his
 23 society, but there was something else there that I think was
 24 important to consider. And I think quite frankly warranted
 25 bringing that sentence back down to a life sentence. And I am

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1 offended that we didn't have that option. That is not going
 2 to happen. That option is available to you.

3 Some people say, Are you going to show mercy? Is there
 4 something there? And as I said, I can't tell you what would
 5 constitute a sufficient mitigating circumstance, that is
 6 entirely up to you to decide, and for each one of you to
 7 decide. You don't have to agree on what is a sufficient
 8 mitigating circumstances, only that there are sufficient
 9 mitigating circumstances.

10 We do not execute the mentally retarded, Mr. Gage, you
 11 cannot do that. However, if there were an individual that was
 12 maybe on the cusp of mental retardation, and maybe that was
 13 something to be taken into consideration, you know, they don't
 14 think like you and I do. They just don't have the same mental
 15 appreciation that you and I do. Maybe there is something
 16 about his background, maybe he has been severely abused since
 17 the time he was a child. And quite frankly maybe his parents
 18 ought to be on trial and not him. Maybe there is something
 19 like that.

20 The question becomes not what you think is a mitigating
 21 circumstance, but if you saw one and you thought it was
 22 sufficient to warrant bringing the sentence back down to life,
 23 would you do it?

24 PROSPECTIVE JUROR: Yes, absolutely. And as a
 25 matter of fact on the other side, I would keep it there until

1 you showed me good evidence that there were no mitigating
 2 circumstances.

3 MS. HANDLEY: Okay. And you understand, there
 4 is no burden of proof for either side on that one?

5 PROSPECTIVE JUROR: I understand.

6 MS. HANDLEY: It is not like I have to come in
 7 and go, here is what is or isn't a mitigating circumstance.
 8 There is no burden of proof there necessarily?

9 PROSPECTIVE JUROR: Then what will you show me.

10 MS. HANDLEY: What I will show you is that he
 11 deserves to die. That is what I will show you. And I will
 12 show you everything about the circumstances of the offense
 13 hopefully, you know, and if you look in that and everything
 14 that I have shown you, and you gather that there is a
 15 sufficient mitigating circumstance of the evidence that is
 16 brought to you, and you have that option. You know, I think
 17 it is fair to say that I know that I as a representative of
 18 the State of Texas is going to come in and say, Mr. Gage, I
 19 believe this is a sufficient mitigating circumstance and would
 20 like for you to reduce that back down to life. Which kind of
 21 puts you in a weird situation, because do they have any burden
 22 of proof?

23 PROSPECTIVE JUROR: No.

24 MS. HANDLEY: No. And they have absolutely no
 25 obligation to bring you anything. And I think in all

1 fairness, a lot of people go, wouldn't you? But I don't know
 2 what is going to happen in trial. You know you have to be
 3 careful about demanding which side bring you proof and such as
 4 that. You will look at everything, and everything is brought
 5 to you, that's what you would make that decision on. You
 6 spoke of alcohol or drug use. Talk to me about that, how does
 7 that play into?

8 PROSPECTIVE JUROR: To me, I think people
 9 commit acts of violence under the, you know, under the
 10 influence of drugs and alcohol. That they under normal
 11 circumstances would certainly not do. To me that can
 12 constitute a mitigating circumstance in a violent crime. As
 13 far as deciding between life imprisonment and capital
 14 punishment, again it depends solely on the circumstances and
 15 the particular case involved. But it is similar to what you
 16 had discussed about, you know, mental retardation, you are
 17 temporarily mentally retarded if you are drunk or on drug; and
 18 yes, you did it to yourself. But still I don't believe you
 19 are in full control of your faculty and you may do things
 20 under normal circumstances you wouldn't do. If that was the
 21 case here, I would probably look at that as a potential
 22 mitigating circumstance.

23 MS. HANDLEY: Are you envisioning a particular
 24 scenario or are you touching on a personal experience or
 25 somebody you know or seen?

1 PROSPECTIVE JUROR: No, I am envisioning it
 2 from this questionnaire. It asked a lot of questions about
 3 drugs, alcohol and how you feel about that. And that's what I
 4 am basing my comments.

5 MS. HANDLEY: The law states intoxication is not
 6 a defense?

7 PROSPECTIVE JUROR: I understand.

8 MS. HANDLEY: We are not talking about defense,
 9 we are talking about mitigating circumstances. And I guess I
 10 wanted to feel you out on that?

11 PROSPECTIVE JUROR: Defense and mitigating
 12 circumstances, it does to me constitute a mitigating
 13 circumstance.

14 MS. HANDLEY: To what extent can I get drugs or
 15 use drugs does that excuse me behavior? Not necessarily
 16 legally excuse, help me out with that.

17 PROSPECTIVE JUROR: Yeah, excuse. I guess we
 18 all have looked back on our college days and realize that when
 19 we got a little too drunk, we did some silly, silly things.
 20 We didn't go so far as to commit a capital crime. We probably
 21 did some semiviolent things, and certainly some illegal
 22 things. But I think it goes all the way up. It goes back to
 23 the character, moral personality, credibility of the person
 24 involved. If you are under the influence, then you aren't
 25 necessarily, you know, thinking the same. You aren't

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1 necessarily the same person that you were when you were
 2 totally sober. You may do things for whatever reason that you
 3 might not do under normal circumstances.

4 MS. HANDLEY: Okay. Fair enough.

5 PROSPECTIVE JUROR: And I think we all have
 6 some amount of personal evidence of that.

7 MS. HANDLEY: Sure.

8 PROSPECTIVE JUROR: We just hadn't -- we didn't
 9 go so far as commit a crime, or maybe we did.

10 MS. HANDLEY: Uh-huh.

11 PROSPECTIVE JUROR: But I just -- I put that in
 12 the same category as mental competence, as severe depression,
 13 a divorcee for instance. He may do something really stupid.
 14 But normally, normally, he is not that person.

15 MS. HANDLEY: Sure. Looking towards his
 16 motivation.

17 PROSPECTIVE JUROR: Yeah, so I can't ignore the
 18 circumstances around the incident that happened and the
 19 particular condition, the mental condition of the accused.

20 MS. HANDLEY: Would it automatically prevent you
 21 from assessing a death sentence if you felt somebody was
 22 intoxicated?

23 PROSPECTIVE JUROR: That's the toughest
 24 question you have asked me. Not automatically. It would
 25 certainly -- it would certainly affect my decision. Yes, I

1 think it would. I can't say that, no, if a person is
 2 intoxicated he can do anything.

3 MS. HANDLEY: Sure.

4 PROSPECTIVE JUROR: Of course not. Again it
 5 depends on the conditions. But it does when you are weighing
 6 the pros and the cons, well, it definitely, it sits on the
 7 side.

8 MS. HANDLEY: Absolutely.

9 PROSPECTIVE JUROR: It sits on the side of
 10 questioning.

11 MS. HANDLEY: Okay. I appreciate your answering
 12 my questions, Mr. Gage. I have talked to you for quite a
 13 while here. And I am going to let the defense attorneys have
 14 an opportunity to kind of pick your brain some more, sir.

15 PROSPECTIVE JUROR: Okay.

16 MS. HANDLEY: Your Honor, I would pass the
 17 juror.

18 **VOIR DIRE EXAMINATION**

19 **BY MR. BRAUCHLE:**

20 MR. BRAUCHLE: Mr. Gage do you need a break.
 21 PROSPECTIVE JUROR: Pardon?

22 MR. BRAUCHLE: Do you need a break.

23 PROSPECTIVE JUROR: No, I am fine, thank you.

24 MR. BRAUCHLE: You may before I get through with
 25 you, but we will see.

1 My name is Paul Brauchle. I have been introduced to you.
 2 Myself and Mr. Johnson represent the defendant, Mr. Ruiz.
 3 I don't think it would come as any surprise to you that
 4 we don't see things the way the people at the other table do?

5 PROSPECTIVE JUROR: I understand.

6 MR. BRAUCHLE: If we did, we could just let one
 7 of them batter you around for an hour and then we could all
 8 put it all aside. We think these things are a little more
 9 complicated than what they make them out to be. And I will
 10 discuss some of our views on that here in the next few
 11 minutes.

12 What book did you bring down here?

13 PROSPECTIVE JUROR: It is the Michael Crichton,
 14 *State Fear of the Global Warming*.

15 MR. BRAUCHLE: Okay. I think you would rather
 16 be reading that than talking to me?

17 PROSPECTIVE JUROR: It is a nice day for golf.

18 MR. BRAUCHLE: Where do you usually play?

19 PROSPECTIVE JUROR: I live out in Richardson,
 20 so I play with the Richardson's Senior Group.

21 MR. BRAUCHLE: You got any questions about
 22 anything we asked you?

23 PROSPECTIVE JUROR: I had plenty of questions
 24 when I came in.

25 MR. BRAUCHLE: Have they been answered?

1 PROSPECTIVE JUROR: I believe the District
 2 Attorney answered most of those questions. I feel pretty
 3 clear on, you know, what my requirements would be and you know
 4 what my responsibility would be. And the eventual outcome of
 5 those decisions.

6 MR. BRAUCHLE: Probably if we would have stopped
 7 you when you finished filling out your questionnaire, and
 8 asked you what happened to you if you are convicted of capital
 9 murder, you would have probably said, you will get the death
 10 penalty; is that a correct statement, because most people
 11 equate guilt of capital murder with the death penalty? They
 12 don't think what we have talked to you about, life without
 13 parole, mitigating issues, continuing threat to society, guilt
 14 equals death. And that is not a bad thing. And I am not
 15 trying -- sure as to whether you would or not.

16 But you know after talking to the District Attorney that
 17 basically once you are found guilty of capital murder, you get
 18 life without parole. And then only if these questions are
 19 found against you, do you get death. And also if the State
 20 fails on any of these questions, that your punishment defaults
 21 back to life without parole. So basically it is life without
 22 parole, the possibility of death rather than death the
 23 possibility of life without parole?

24 PROSPECTIVE JUROR: Well, I knew -- at least I
 25 assumed that capital meant there would be a possibility of

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1 life imprisonment -- or lesser sentence. And I assumed it to
 2 be life imprisonment. And I think the synopses we read here
 3 indicated that. So that was my opinion at the time that a
 4 capital offense didn't necessarily mean a death sentence. And
 5 the jury would be given the decision to make. But I had no
 6 idea of these mitigating circumstances issues, which I like.

7 MR. BRAUCHLE: You haven't seen those questions
 8 on billboards around town or anything?

9 PROSPECTIVE JUROR: No, no.

10 MR. BRAUCHLE: And as the District Attorney told
 11 you, we didn't write those and we don't know who did. It's
 12 our job to explain them.

13 Let me go fast forward to the first special issue. I
 14 know being an engineer, probability is a decimal point and no
 15 matter how many zero come after that, that's a number that's a
 16 probability?

17 PROSPECTIVE JUROR: We dealt with the
 18 probability of failure in the 1 millionth in the space system.

19 MR. BRAUCHLE: So probability to an engineer is
 20 certainly something different than probability to a layperson?

21 PROSPECTIVE JUROR: Yes. But I think it was
 22 very carefully explained to me that probability in this case
 23 is better than a 50/50 chance, and I can certainly look at
 24 that.

25 MR. BRAUCHLE: You understand that the courts

1 had to tell use that it had to be more than a 50/50 chance,
 2 otherwise the answer to special issue -- to special issue
 3 number one would always be yes. As slight as a probability
 4 could be. If it is not more than 50/50, the question wouldn't
 5 have much meaning, don't you agree with me on that? You know
 6 if it could be down to probability?

7 PROSPECTIVE JUROR: Yeah, you are right, you are
 8 right. I think you have to draw the line. It's, ah -- in
 9 this case, yes it's not a scientific mathematical decision, it
 10 is a possibility versus a probability.

11 MR. BRAUCHLE: Well, see, evidently the learned
 12 body who drew this up was counting on engineers to come in and
 13 be confronted with the question. But you understand --

14 PROSPECTIVE JUROR: Does that mean I am
 15 released.

16 MR. BRAUCHLE: If only it were that easy. We
 17 got our minutes on you now.

18 If you look at special issue number one, probability
 19 comes right behind reasonable doubt. So it says if you find
 20 from the evidence beyond a reasonable doubt that there is a
 21 probability, and because of the position -- or the flow of
 22 that, if there is a flow of that question, we think that it
 23 has to mean -- or has to be related to reasonable doubt. You
 24 understand if reasonable doubt is more than 50/50 to you, if
 25 it gets to probability and probability is only 50 percent, you

1 are dropping off on the burden of proof?
 2 PROSPECTIVE JUROR: I understand you have two
 3 variables here that you have the proof of both or the belief
 4 of both.

5 MR. BRAUCHLE: Now, then, what are we looking
 6 for in that question? If the defendant is going to commit
 7 criminal acts of violence and if those criminal acts of
 8 violence are going to constitute not just a threat to society,
 9 but a continuing threat to society, in other words?

10 PROSPECTIVE JUROR: Now you have introduced
 11 a third variable.

12 MR. BRAUCHLE: Well, there is all sorts of
 13 variables there and they all have to be satisfied going back
 14 to the first part beyond a reasonable doubt. We think that --
 15 or my co-counsel and I think that probably what that question
 16 is asking you is the shorthand version would be, is this
 17 person going to be such a threat to society that the only way
 18 that we can control him is to eliminate him from society?

19 PROSPECTIVE JUROR: I agree with you on that, I
 20 believe that's what that question is trying to ask. Is this
 21 person a real threat to the people around him to the extent
 22 that he can't be allowed to be there.

23 MR. BRAUCHLE: Well, that would make -- we think
 24 that makes sense in special issue number one. Now, then,
 25 let's go through the mechanics of this. You find him guilty,

1 you find he is going to be a continuing threat to society, and
 2 then we spring special issue number two on you which says that
 3 in spite of your being convinced beyond a reasonable doubt
 4 that he is guilty, besides being convinced beyond a reasonable
 5 doubt we can't control him without killing him, hey, wait a
 6 minute, let's go back --

7 PROSPECTIVE JUROR: I see where you are going,
 8 and it takes issue number two off the docket, doesn't it?

9 MR. BRAUCHLE: Well, it may or may not. But the
 10 thing is, as Ms. Handley told you, they don't have to show any
 11 mitigating evidence. We may or may not.

12 PROSPECTIVE JUROR: Uh-huh.

13 MR. BRAUCHLE: And what you need to be able to
 14 tell us is, is if any is introduced, is there sufficient
 15 mitigating circumstance or circumstances to warrant a life
 16 sentence rather than the death sentence?

17 Now, the one thing you have to figure in is I assume is
 18 that the prison system to some extent is willing to accept him
 19 no matter what the verdict. We are not saying a jury over
 20 here is not just going to send him back out to Dallas County
 21 somewhere. He is going to be imprisoned for life without
 22 parole.

23 PROSPECTIVE JUROR: Uh-huh.

24 MR. BRAUCHLE: But in any event, what you have
 25 to be able to tell us is, if there is a mitigating

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1 circumstance and you think it is sufficient, that you will
 2 give meaning to that and go back to the life without parole?
 3 And I think from Ms. Handley's talks with you, you indicated
 4 that you can do that?

5 PROSPECTIVE JUROR: I think my position would
 6 be that I would have to go all the way to the end the trial,
 7 the special issues, everything, and answer yes, yes, yes, yes,
 8 yes all the way through before I could, you know, give the
 9 death penalty.

10 MR. BRAUCHLE: Well, that's what the law
 11 anticipates.

12 PROSPECTIVE JUROR: Absolutely.

13 MR. BRAUCHLE: You answer special issue number
 14 one. Well, actually they visualize the answer a little
 15 different. Special issue number one, if that's "yes", he gets
 16 death. And then you find that there is a sufficient
 17 mitigation, if that is found "no" -- it is "yes", "no", then
 18 that death results.

19 PROSPECTIVE JUROR: It goes back.

20 MR. BRAUCHLE: Because "yes", "yes", it is life
 21 without parole. We are just quivering over which answer to
 22 put in.

23 PROSPECTIVE JUROR: It seems that special issue
 24 number one, if you answer, yes, that is reasonable doubt and a
 25 probability that you would think, well, you know what

1 mitigating circumstance could reverse that, but there may be.

2 MR. BRAUCHLE: Well, that's the attitude that
 3 you have to take going in. We can't tell you that there is or
 4 isn't. We are just saying if there is a sufficient one, would
 5 you give it weight enough or weigh it enough -- some people
 6 sitting where you are sitting, That's the dumbest question
 7 that I have ever seen. I am convinced that he needs to be
 8 killed, but you want me to spare his life, how does that work?
 9 We are not here saying that that's in any way a logical
 10 sequence there. But what we have to find out is if you have
 11 the intellectual integrity that you will be able to separate
 12 those two planes in you mind before you can give a factual to
 13 the question?

14 PROSPECTIVE JUROR: I understand.

15 MR. BRAUCHLE: Let me touch on one other issue
 16 with you. You understand that we talked to you about certain
 17 aspects of murder. And there is one issue that we haven't
 18 brought up which may come into play.

19 We have to sit here and talk to you about all sorts of
 20 different things whether they are going to be relevant or not.
 21 One of them might be the issue of self-defense. And I don't
 22 know how much you know about self-defense. But quite frankly,
 23 it's a justified homicide. I could kill everybody at both
 24 these counsel tables. If it is done in self-defense, it is
 25 not against the law.

1 And you believe in the right to self-defense?
 2 PROSPECTIVE JUROR: Certainly.
 3 MR. BRAUCHLE: I also have the right to protect
 4 other people or property or whatever. But basically
 5 self-defense is self preservation. Taking somebody's life to
 6 protect your own.

7 Let me just say this. Self-defense is always looked at
 8 from the person who is claiming it point of view, okay. I
 9 shoot Ms. Handley, and I say it was self-defense. It is my
 10 perception of my danger and her threat at this time, not what
 11 may or may not be what you see. Because you may not know
 12 threats from Ms. Handley. You may not know of previous
 13 relationship between the two of us. You know there may be --
 14 there may be things that are long standing, or whatever, to a
 15 witness may not be evident. I am not saying that my story has
 16 to be believed implicitly. But certainly you look to my point
 17 of view and my perception of danger to decide whether my claim
 18 of self-defense is legitimate.

19 You have any problem with that?

20 PROSPECTIVE JUROR: So basically that says that
 21 Ms. Handley's associate would have to prove beyond a
 22 reasonable doubt that your defense was false?

23 MR. BRAUCHLE: That's correct. You took the
 24 next part of my spill away from me. They have to prove just
 25 like everything else beyond a reasonable doubt that I didn't

1 act in self-defense or that I didn't have a legitimate view of
 2 danger, threat or whatever. And as with everything down here,
 3 I think I am preaching to the choir because I think you are
 4 ahead of me on that. Everything you have to look for is over
 5 there. They have to prove each and everything that has to be
 6 proven over there. They usually tell you that we don't have
 7 to do anything but work crossword puzzles and show up.
 8 Basically that is true. I am not saying that we are going to
 9 resort to that, but the law really doesn't require us to do
 10 anything but show up. We don't have to ask questions. We
 11 don't have to do all the stuff you see on TV. But you can't
 12 ever look to us for any type of proof.

13 And as Ms. Handley said, when you get to special issue
 14 number two, she is going to say that the evidence they are
 15 going to bring will be enough -- enough for you to kill him.
 16 So don't be looking for childhood pictures or that type if you
 17 think that is going to be mitigating. Because they stated
 18 that their dedicated purpose and they stated quite frankly,
 19 they want to kill our client.

20 You have any problem with that. You might be wanting us
 21 to do something and it might be something that you think we
 22 could do easily and wouldn't be limited in any way?

23 PROSPECTIVE JUROR: But you are not required to
 24 do that.

25 MR. BRAUCHLE: You will be -- I hope happy -- I

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 1 don't have any other questions for you. Thank you, sir.
 2 THE COURT: Thank you, Mr. Gage. You may step
 3 down.

4 THE BAILIFF: All rise for the juror.
 5 (Prospective juror retired from the courtroom.)
 6 (Pause in the proceedings.)
 7 THE BAILIFF: All rise for the juror.
 8 (Prospective juror entered the courtroom.)
 9 THE COURT: You may be seated.

10 Mr. Gage, there is a possibility of perhaps a probability
 11 that you will be selected to be on this jury, what we are
 12 going to do is release you today. And we will let you know in
 13 about two perhaps three days at the latest if you have been
 14 selected to be on this jury or not.

15 That being the case, I would admonish you not to do any
 16 research on this case, anything on the web. If you see it in
 17 the media, just do not pay any attention to it, change the
 18 channel and don't read it in the newspaper. And as soon as we
 19 find out, we will let you know whether or not you are a juror.
 20 And with that, you are free to go.

21 PROSPECTIVE JUROR: Can I ask one question?
 22 THE COURT: You may.
 23 PROSPECTIVE JUROR: I have a trip to Pebble
 24 Beach planned March 29th through April 3rd.
 25 THE COURT: We anticipate getting started the

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 1 second, third week, with the actual trial second or third week
 2 in April?

3 PROSPECTIVE JUROR: No problem, then I can
 4 maintain my plans.

5 THE COURT: Certainly.
 6 Fifteen-minute recess.
 7 (Recess taken.)
 8 THE BAILIFF: All rise for the juror.
 9 (Prospective juror entered the courtroom.)
 10 THE COURT: You may be seated. Ms. Worsham, how
 11 are you doing today?

12 PROSPECTIVE JUROR: Good, thank you.
 13 THE COURT: I apologize for the delay.

14 Sometimes these interviews run a little longer than we
 15 anticipate. So I appreciate your patience.

16 The attorneys have some questions to ask you regarding
 17 your qualifications as a juror in this case. There aren't any
 18 right or wrong answers. They merely wish to see how you feel
 19 about certain issues that will be prevalent in this case.

20 State will commence questioning. I believe Ms. Handley
 21 will be doing the questioning.

22 What says the State?

23 MS. HANDLEY: May it please the Court?

24

25

1 got to do them all. And every element of the offense is just
2 as important as the other, is it not?

3 PROSPECTIVE JUROR: Yes.

4 MS. HANDLEY: If I failed to prove that he was
5 in fact a peace officer, that carries just as much weight as if
6 I failed to prove that it happened in Dallas County, Texas,
7 correct?

8 PROSPECTIVE JUROR: Yes.

9 MS. HANDLEY: And if I for example were
10 incredibly remiss and didn't bring you a shred of evidence
11 that it happened in Dallas County, Texas, I think you will agree
12 with me that I failed to prove my case?

13 PROSPECTIVE JUROR: Right.

14 MS. HANDLEY: And His Honor by law will instruct
15 you to find him not guilty by law?

16 PROSPECTIVE JUROR: Uh-huh.

17 MS. HANDLEY: And as I said, that is horribly
18 remiss of me and that touches on your qualifications to be a
19 juror. If I failed to prove that, or if worse yet I prove it
20 happened in Tarrant County, Texas, would you then follow the
21 law and return a verdict of not guilty?

22 PROSPECTIVE JUROR: Yes.

23 MS. HANDLEY: You understand that the
24 indictment, I believe there is a copy of it in front of you
25 there, but it is basically just words on a piece of paper,

1 isn't it?

2 PROSPECTIVE JUROR: Yes. Do I need to look at
3 it.

4 MS. HANDLEY: I will paraphrase for you. You
5 know we have to prove on or about a certain date, that the
6 defendant, in Dallas County, Texas, did intentionally and
7 knowingly take the life of a peace officer while he was in the
8 line of the duty, and that he did that by shooting him with a
9 firearm. That is just a piece of paper. Tells me what I have
10 to prove. And tells the defendant what he has been charged
11 with, correct?

12 PROSPECTIVE JUROR: Yes.

13 MS. HANDLEY: And the law provides that you
14 cannot use that as a piece of evidence against him.

15 You understand that law, correct?

16 PROSPECTIVE JUROR: Yes.

17 MS. HANDLEY: Again, that's the law that you can
18 and would also follow, can you not?

19 PROSPECTIVE JUROR: Yes.

20 MS. HANDLEY: Burden of proof in this case is
21 beyond a reasonable doubt. And I am sure that is just worlds
22 different from the burden of proof that y'all are accustomed
23 to in your civil case, correct?

24 PROSPECTIVE JUROR: Yes.

25 MS. HANDLEY: You will agree with me that that

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1 is the highest burden of proof in our system, is it not?

2 PROSPECTIVE JUROR: Yes.

3 MS. HANDLEY: And as you may know, it may not
4 necessarily be a definition of reasonable doubt, it is
5 whatever you think it is. Some people say I have to be
6 certain, I have to be able to sleep at night knowing that I
7 did the right thing. So it is whatever you think it is. But
8 you would agree with me, ma'am, that it is an incredibly high
9 burden?

10 PROSPECTIVE JUROR: Yes.

11 MS. HANDLEY: And you would continue to hold us
12 to that burden of proof?

13 PROSPECTIVE JUROR: Yes.

14 MS. HANDLEY: And obviously you are familiar
15 that the defendant has a right not to testify in a case, and I
16 cannot force a defendant to testify. If an individual elects
17 to exercise that constitutional right and not take the stand,
18 you wouldn't hold that against him or use that as any evidence
19 of his guilt, would you?

20 PROSPECTIVE JUROR: No.

21 MS. HANDLEY: And again as we sit here today,
22 because I brought you absolutely no evidence whatsoever, the
23 law states that you are to presume him innocent as he sits
24 here today and to continue to presume him innocent until I
25 prove to you beyond a reasonable doubt otherwise. And that's

1 a law that you understand and agree to follow; is that
2 correct?

3 PROSPECTIVE JUROR: Yes.

4 MS. HANDLEY: I think you have a good
5 appreciation for that, ma'am, and can I take your word for it
6 that you would consistently follow the law in this case?

7 PROSPECTIVE JUROR: Yes.

8 MS. HANDLEY: And that you would ultimately base
9 where your verdict in this case on the evidence in this case
10 and on nothing else?

11 PROSPECTIVE JUROR: Yes.

12 MS. HANDLEY: And your obligation as a juror, as
13 you know, is to not only weigh the testimony and weigh the
14 evidence in the case, but also to assess the credibility of
15 the witnesses, correct?

16 PROSPECTIVE JUROR: Right.

17 MS. HANDLEY: And you have probably been called
18 upon from time to time to put witnesses on and -- put
19 witnesses on and you know that a judge or jury, whatever the
20 case may be at that point, assess their credibility?

21 PROSPECTIVE JUROR: Yes.

22 MS. HANDLEY: And that it would be improper for
23 them to say, oh, she is calling for a police officer, I am
24 going to automatically believe everything they said?

25 PROSPECTIVE JUROR: Right.

1 MS. HANDLEY: You have to make that assessment
2 from the witness stand.

3 I bring that up because in your questionnaire when we
4 asked you, what comes to mind when you hear of certain people
5 and occupation, do you believe that an officer is more likely
6 to tell the truth? I believe you selected more likely; is
7 that correct?

8 PROSPECTIVE JUROR: I don't think so.

9 MS. HANDLEY: Let me double check.

10 PROSPECTIVE JUROR: I may have, but didn't
11 mean to if I did.

12 MS. HANDLEY: Oh, I beg your pardon, then on
13 that. You know what I don't think you did do that. I got you
14 confused with the 500 other questionnaires I read. No, you
15 did not. That is my mistake. I beg your pardon. So you
16 obviously right there another full appreciation that
17 credibility is assessed from the witness stand, nothing is
18 automatic, correct?

19 PROSPECTIVE JUROR: That's correct.

20 MS. HANDLEY: I feel like I am preaching to a
21 choir right now. Keeping in mind that I am taking from you
22 that I get your absolute assurance and that you will base your
23 verdict based on the evidence in the case. If we prove to you
24 beyond a reasonable doubt that the defendant is guilty of
25 capital murder as charged in the indictment, you would return

1 a verdict of guilty; is that correct?

2 PROSPECTIVE JUROR: If you meet your burden.
3 MS. HANDLEY: Very good. As you probably also
4 know, we have had a lot of come in and come in under the
5 assumption that if you find an individual guilty, they are
6 automatically going to get the death penalty. And I think you
7 understand that is not the way it is, correct?

8 PROSPECTIVE JUROR: That's correct.

9 MS. HANDLEY: You do understand that having been
10 found guilty, the best he will get is life imprison without
11 parole?

12 PROSPECTIVE JUROR: Yes.

13 MS. HANDLEY: Until we can prove to you beyond a
14 reasonable doubt that the more appropriate sentence in this
15 case is death, that you are to continue to presume that life
16 is the appropriate thing to do, correct?

17 PROSPECTIVE JUROR: Correct.

18 MS. HANDLEY: We ask you to do that by going
19 back there with the other 11 jurors, in looking at the
20 evidence in its entirety, instead of having a round table
21 discussion, we ask you to answer a series of questions and
22 based on your answers to those questions, that will make your
23 determination as to whether or not he receives life imprison
24 or a death sentence.

25 The first question we ask you is that special issue

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1 number one over there to your left. I don't know how long it
2 has been since you read that or if you ever read that, but go
3 ahead and take a moment to take a look at that?

4 PROSPECTIVE JUROR: Okay.

5 MS. HANDLEY: Okay. As I am sure you can fully
6 appreciate, that at that point, the best the defendant is ever
7 going to do is life imprison, correct?

8 PROSPECTIVE JUROR: Yes.

9 MS. HANDLEY: And so when we ask you to take
10 into consideration whether or not he is going to be a future
11 danger to society. I believe the legislature contemplates
12 that you and me on the road what we consider as society is
13 probably different from what is the defendant's society at
14 that point. I don't know if you ever toured a prison?

15 PROSPECTIVE JUROR: No.

16 MS. HANDLEY: You never had the pleasure of
17 that. I am sure you understand that there are more people
18 contained within a prison other than inmates?

19 PROSPECTIVE JUROR: Yes.

20 MS. HANDLEY: We have prison guards, medical
21 personnel, educators, people coming to visit in and out of
22 there. And that in and of itself could also be considered a
23 society. And would your definition, ma'am, of our society at
24 a large be broad enough to also include where the defendant is
25 going to be that he is also in this society?

1 PROSPECTIVE JUROR: Yes.

2 MS. HANDLEY: That's referred to as the future
3 dangerousness question. I am sure you have heard of that.
4 When you go into that second phase of the trial there, you go
5 in with the presumption that the right thing to do is to give
6 him life imprison. That presumption of life is most
7 appropriate, never change until we can prove to you that the
8 answer to that question ought to be "yes". If the answer to
9 that question is "yes", that's what elevates that sentence of
10 life up to a death sentence. As you can probably appreciate
11 being a lawyer, yourself, oftentimes we get definitions of
12 terms and sometimes we just don't. We don't get a whole lot
13 of guidance.

14 Reasonable doubt is not defined anymore. It is whatever
15 you think it is, as long as you understand it is the highest
16 burden of proof. They don't define also the word probability.
17 I think it is a fair thing to say that there is a huge
18 difference between something being a possibility and a
19 probability; would you agree with me?

20 PROSPECTIVE JUROR: Yes.

21 MS. HANDLEY: And that a probability is in all
22 things, fairly defined is more likely than not or greater than
23 50 percent; would you agree with me on that?

24 PROSPECTIVE JUROR: Yes.

25 MS. HANDLEY: They go on further, would you find

1 the defendant would commit criminal acts of violence. And
 2 again, they don't define that. And they specifically don't
 3 set out that the defendant would commit another murder, that
 4 the defendant would commit a murder or another robbery, or an
 5 assault. They just set out it's something for you to decide
 6 criminal act of violence.

7 If I balled up my fist and knocked my co-counsel end over
 8 end out of his chair, that might constitute a criminal act of
 9 violence?

10 PROSPECTIVE JUROR: It certainly good.

11 MS. HANDLEY: Certainly a violent act. And I
 12 think you would agree with me, a misdemeanor assault, a
 13 criminal act?

14 PROSPECTIVE JUROR: That's correct.

15 MS. HANDLEY: Again for you to decide what
 16 constitutes a criminal act. And then he would do that and it
 17 would be a continuing threat to society. We already talked
 18 about that. It would be the society in which he is in. And
 19 that the prison society can be encompassed within our greater
 20 society as a whole. Our obligation to you is to prove that
 21 that question should be "yes" versus the immediate assumption
 22 that it is "no"?

23 PROSPECTIVE JUROR: Right.

24 MS. HANDLEY: What sort of things do you think
 25 you have to see here in order to answer that question yes or

1 no?

2 PROSPECTIVE JUROR: Well, with -- certainly his
 3 background, if he had a record, that wouldn't be in and of
 4 itself, you know, the end all, be all question.

5 MS. HANDLEY: Sure.

6 PROSPECTIVE JUROR: But I think it would be a
 7 factor. His testimony about his demeanor, temper, those
 8 general types of things.

9 MS. HANDLEY: Not necessarily his testimony?

10 PROSPECTIVE JUROR: I understand he doesn't have
 11 to testify. Family, teacher, whatever would testify about
 12 that issue.

13 MS. HANDLEY: And just again to touch on your
 14 qualifications, personally do you understand what we are
 15 talking about there?

16 PROSPECTIVE JUROR: Yes.

17 MS. HANDLEY: And before you would ever answer
 18 that question "yes", can you assure us that you would not
 19 answer that question "yes" until we prove to you beyond a
 20 reasonable doubt that it should be "yes"?

21 PROSPECTIVE JUROR: Yes.

22 MS. HANDLEY: If you answer that question "yes",
 23 ma'am, that presumption that life is the more appropriate
 24 sentence is now elevated up to a death sentence. Now he is
 25 sitting on a death sentence at that point. Of course we are

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1 not finished. We still have to answer one more question,
 2 that's that special issue, that mitigating circumstance issue.

3 PROSPECTIVE JUROR: Okay.

4 MS. HANDLEY: I think you can fully appreciate
 5 being a Texas lawyer, we are one of the last of the states to
 6 allow jurors to actually assess punishment for criminal cases.
 7 We are just a select number now. This special issue goes
 8 along that team that we have entrusted the jury to decide what
 9 is most appropriate. So again we are going to leave open all
 10 the options available to you. You may have found him guilty
 11 of capital murder. You may in fact believe beyond a
 12 reasonable doubt that he is a future danger to society, but we
 13 are not going to shut it off there. We are going to give you
 14 one more chance to review all the evidence in the case, be it
 15 evidence of the offense, be it evidence of his character, his
 16 upbringing, consider what kind of moral culpability,
 17 blameworthiness did he have in the case. You get to look at
 18 everything before we commit you to a decision. And to ask
 19 yourself is there a mitigating circumstance in this case and
 20 is it sufficient enough mitigating circumstance that you
 21 believe brings that death sentence back down to a life
 22 sentence? Of course I can't commit you right now to what do
 23 you think, you know, what would you have to see in order to be
 24 a mitigating circumstance? Sometimes it is just
 25 if-you-know-it-you-see-it kind of thing. I can't commit you

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1 to a certain set of facts or something. But the question
 2 becomes to you as a potential juror, ma'am, if you having
 3 found him guilty of capital murder, having found he is a
 4 future danger, you reviewed all the evidence again, and you
 5 felt that there was sufficient mitigating circumstance or
 6 circumstances to bring that sentence back down to a life
 7 sentence, would you in fact do that?

8 PROSPECTIVE JUROR: Yes.

9 MS. HANDLEY: And you look very emphatic and
 10 sure about that. In other words, ma'am, you will agree to
 11 follow the law; is that correct?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: And you will base your verdict and
 14 the punishment verdict on the evidence in the case?

15 PROSPECTIVE JUROR: Yes.

16 MS. HANDLEY: You will assess the credibility of
 17 witnesses from the witness stand?

18 PROSPECTIVE JUROR: Yes.

19 MS. HANDLEY: Okay. Any questions about the law
 20 or anything that pertains to capital murder? I know you are
 21 not fully involved in that in your profession, it is hard not
 22 to see the other side of the playing field?

23 PROSPECTIVE JUROR: No, I think I could follow
 24 the evidence.

25 MS. HANDLEY: I think you are probably the

1 easiest potential juror I have talked to, I appreciate that.
 2 I am going to let the defense counsel just also question
 3 you a little bit more on your qualifications and your
 4 understanding of the law at this point.

5 PROSPECTIVE JUROR: Okay.

6 MS. HANDLEY: I will pass the juror, Your Honor.
 7 THE COURT: Thank you, Ms. Handley.

8 VOIR DIRE EXAMINATION

9 BY MR. BRAUCHLE:

10 Good morning, Ms. Worsham?

11 PROSPECTIVE JUROR: Good morning.

12 MR. BRAUCHLE: My name is Paul Brauchle, and I
 13 got some questions for you. Obviously the people at this
 14 table don't see eye to eye with the people at that table. If
 15 we did, we would just all sit at the same table and make it
 16 easy for people sitting up there where you are. We have
 17 read -- I think it is probably more than 500, Ms. Handley said
 18 we have read at least 500 questionnaires so you could kind of
 19 how they run together at some point in time?

20 PROSPECTIVE JUROR: Yes.

21 MR. BRAUCHLE: And we might not be exactly clear
 22 on all the pertinent information to you.

23 Is there anything about your questionnaire that you would
 24 change or that you made a wrong answer or anything like that?

25 PROSPECTIVE JUROR: No in reading it back this

1 morning, my answers on who do you most respect and least
 2 respect. I had a hard time with that that day, I couldn't
 3 even remember what I wrote. Because I generally don't respect
 4 people unless I know them. So I am not sure my answer on that
 5 question would be the same today, but that was about the only
 6 one. I don't know that it would be different.

7 MR. BRAUCHLE: It is not something that you
 8 think about on an everyday basis?

9 PROSPECTIVE JUROR: Exactly.

10 MR. BRAUCHLE: And a lot of people, even though
 11 the instructions say that they have publicly known, they end
 12 up putting all their family members on there.

13 PROSPECTIVE JUROR: Yeah.

14 MR. BRAUCHLE: It could kind of be an
 15 interesting deal at a family reunion, whatever?

16 PROSPECTIVE JUROR: Who is missing.

17 MR. BRAUCHLE: Who is missing, put in the
 18 disrespect column. Other than that, that's about all you
 19 would change?

20 PROSPECTIVE JUROR: Yes, sir. And I guess the
 21 voting question. I voted since the day I put there, because I
 22 voted last week, but other than that.

23 MR. BRAUCHLE: Okay. Let me just share this
 24 with you. If we were to stop you when you filled that
 25 questionnaire out and you were going back to whatever business

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1 you had that day, and asked you what the result of getting
 2 found guilty of capital murder was, would you have told us
 3 that if you are found guilty of capital murder you receive the
 4 death penalty?

5 PROSPECTIVE JUROR: No.

6 MR. BRAUCHLE: Well, most people -- obviously
 7 you being an attorney, you got a little more insight. Most
 8 people equate guilt with death.

9 PROSPECTIVE JUROR: True.

10 MR. BRAUCHLE: And as you can tell from your
 11 training and talking to Ms. Handley, the death penalty, they
 12 have to work to get that. Because once you are found guilty,
 13 you get life imprison. And only if that first special issue
 14 is answered "yes", do you get death. And that first special
 15 issue is presumed to be "no", just like we took some spray
 16 paint and spray painted all over it, they have to erase that
 17 "no" before the defendant can receive death.

18 Then you see even further with special issue number two,
 19 if that is answered, yes, then the -- the default is back to
 20 life imprison?

21 PROSPECTIVE JUROR: Right.

22 MR. BRAUCHLE: So it is set up to whether the
 23 State fails on any level that proof, that defendant gets life
 24 without parole. But most people would think, well, if he is
 25 guilty, it is death. Really it is a life-without-parole

1 situation unless they prove some other things.

2 Now, then, let's go to the special issues. And let me
 3 ask you something, as you read that first special issue, you
 4 see the word there at the end of the second line, probability,
 5 what does that mean to you?

6 PROSPECTIVE JUROR: It would mean to me
 7 certainly more than 50 percent and not as high as a reasonable
 8 doubt. But to me, without instruction, it would mean
 9 somewhere more than 50 and less than a hundred.

10 MR. BRAUCHLE: You don't know where then?
 11 PROSPECTIVE JUROR: For me, it would have to be
 12 probably in the 75, 80 percent. I mean it is hard for me to
 13 quantify it. To me it is more probable than not probable. It
 14 is more than 51 percent, but I don't have to be a hundred
 15 percent sure for probability.

16 MR. BRAUCHLE: Okay, how about criminal acts of
 17 violence? What do you think constitutes criminal acts of
 18 violence?

19 PROSPECTIVE JUROR: Certainly wouldn't be
 20 stealing gum or cigarettes from another inmate. I would think
 21 it would have to be -- some type of an assault. I don't know
 22 if it would have to be an assault with a weapon or not. I
 23 haven't really thought about that. But it would certainly --
 24 certainly include from the definition of violence some
 25 physical alteration.

1 MR. BRAUCHLE: Let's look at the second special
 2 issue. You realize I don't think they are numbered. But I
 3 think they are going to be presented to you in the order that
 4 they are up there. And you realize that you don't get to that
 5 special issue unless you found that the person fills all the
 6 attributes of the special -- the first special issue?

7 PROSPECTIVE JUROR: Correct.

8 MR. BRAUCHLE: If the State can't prove the
 9 first special issue to you, you don't go to the second one,
 10 and you don't have to grapple with that.

11 Do you have any idea what would have to be shown or not
 12 shown to you before you could answer that first special issue
 13 in such a way to -- that we can proceed down?

14 PROSPECTIVE JUROR: Well, you know I need to
 15 hear a little bit about certainly how he was raised, has he
 16 been in trouble before, did he go to school, did he beat up
 17 little old ladies at the bus stop, good to church. Not that
 18 is all and all, be all and take into consideration the type of
 19 crime that resulted in the death and state -- psychiatrist
 20 testimony could be persuasive on that fact. Presuming that
 21 the doctor actually saw the patient versus just commenting.
 22 Those would be the type of things that -- I would obviously
 23 take into consideration anything you put in, but those would
 24 be kind of the things -- what his background was, what he has
 25 done up to this time. Those type of things.

1 MR. BRAUCHLE: Well, I don't want to disappoint
 2 you, and I am not trying to lecture to you, those people over
 3 there are trying to kill our client. I don't think they are
 4 going to bring baby pictures or somehow be mitigating.

5 PROSPECTIVE JUROR: Correct.

6 MR. BRAUCHLE: If there is something out there
 7 that shows him to be a bad person or not worthy of being saved
 8 from the death penalty, they are going to try to find it. And
 9 unfortunately under our system of jurisprudence as you know,
 10 we don't have any duty to bring any evidence to the courtroom?

11 PROSPECTIVE JUROR: Right.

12 MR. BRAUCHLE: And being a lawyer, you are one
 13 of the few people that I think can appreciate that. Because
 14 generally when we tell people sitting where you are, they kind
 15 of gristle and say, Well, why not, you are supposed to defend
 16 the person. That is kind of a TV concept as opposed to real
 17 life. Because once we show up down here, and we are pretty
 18 good about showing up, we don't have to do anything. We got
 19 our client here, and we are here. And we have fulfilled our
 20 obligation. Now, that is not to say that we might not strive
 21 mildly to help you through these questions, but we don't have
 22 to. That's an unfortunate situation in life. And I think you
 23 can appreciate our dilemma or lack thereof in regard to
 24 evidence one way or the other. As you know, even in civil
 25 law, you still look to the plaintiff or the movant party.

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1 So can you see you might be hamstrung in regard to
 2 looking at -- looking at or finding mitigating evidence in
 3 regard to that second special issue?

4 PROSPECTIVE JUROR: I would agree that I doubt
 5 they are going to put on any if it gets that far -- I mean if
 6 it gets to that stage.

7 MR. BRAUCHLE: You got any questions of me?

8 PROSPECTIVE JUROR: No, sir.

9 MR. BRAUCHLE: Being close to the lunch hour,
 10 you probably wouldn't ask them anyway?

11 PROSPECTIVE JUROR: No, I am down here, I
 12 would ask them.

13 MR. BRAUCHLE: All right. I don't know where
 14 that noise comes from, it is not from you?

15 PROSPECTIVE JUROR: Okay, good.

16 MR. BRAUCHLE: There have been a lot of suspects
 17 that it could be attributed to you, but I don't think it comes
 18 from the witness stand.

19 Ms. Worsham, you will be glad to know that at the present
 20 time I don't have any further questions of you. Thank you
 21 very much.

22 PROSPECTIVE JUROR: Thank you.

23 THE COURT: You may step down, Ms. Worsham.
 24 (Jury retired from the courtroom.)

25 THE COURT: Just so I am on the same page, we

1 are doing the same thing with her?

2 MS. HANDLEY: No.

3 MR. BRAUCHLE: Your Honor, as the Court's well
 4 aware -- oh, y'all have to accept her.

5 MS. HANDLEY: Your Honor, we would accept juror
 6 78-G, Laura Worsham, we will accept her.

7 THE COURT: Thank you, Ms. Handley.

8 Now you may proceed, Mr. Brauchle.

9 MR. BRAUCHLE: As the Court is well aware, we
 10 suspended our 15th peremptory strike yesterday due to a
 11 great extent to erroneous or improper rulings by the Court, as
 12 well as poor jurors.

13 And in regard to this juror, we find her as being totally
 14 unacceptable by her questions in regard to this special issue,
 15 not acceptable to either us or our client. And because of the
 16 not having any further peremptory challenges, we would ask the
 17 Court to grant us an additional peremptory challenge to
 18 preserve the rights of our defendant. We would anticipate
 19 that the Court would see that she is not qualified in regard
 20 to deciding the special issues set out in special issue number
 21 two, which therefore makes her unacceptable under Morgan
 22 versus Illinois. And we also think that she places an
 23 unreasonable burden on the defendant by expectations of us
 24 presenting or obtaining evidence to answer the special issues
 25 in the event that our client is found guilty. And we would

1 once again ask the Court for an additional challenge.
 2 THE COURT: The Court will grant --
 3 MR. BEACH: May we approach?
 4 (Discussion off the record.)
 5 THE COURT: The Court will overrule your
 6 request, Mr. Brauchle -- or challenge.
 7 MR. BRAUCHLE: Note our exceptions, Your Honor.
 8 Because of the Court's erroneous ruling we would renew
 9 our request for an additional peremptory challenge and we
 10 would state the reasons for our request as those that have
 11 been set out heretofore.
 12 THE COURT: The Court will grant the Defense's
 13 request for an additional challenge.
 14 MR. BRAUCHLE: We will now use the additional
 15 peremptory challenge to strike Juror No. 78-G Laura Worsham.
 16 THE COURT: Mr. Moorehead, if you will bring
 17 Ms. Worsham.
 18 THE BAILIFF: All rise for the juror.
 19 (Prospective juror entered the courtroom.)
 20 THE COURT: Ms. Worsham I will have you know
 21 that you have been excused as a juror in this case, you are
 22 free to go.
 23 PROSPECTIVE JUROR: Thank you very much.
 24 THE COURT: We are recessed until 1:15.
 25 (Lunch recess taken.)

1 THE BAILIFF: All rise for the juror.
 2 (Prospective juror entered the courtroom.)
 3 THE COURT: You may be seated. Good afternoon,
 4 Ms. Hartgrave. How are you?
 5 PROSPECTIVE JUROR: Good.
 6 THE COURT: I apologize for the delay. As I
 7 told you earlier, sometimes the interviews go a little longer
 8 than we anticipate. So we appreciate your patience. The
 9 attorneys are going to question you about your qualifications
 10 as a juror on this case. There aren't any right or wrong
 11 answers. They are merely trying to see how you feel about
 12 certain issues.
 13 The State will proceed.
 14 What says the State?
 15 MR. BEACH: May it please the Court?
 16 CORINE HARTGRAVE
 17 was called as a prospective juror, after having been
 18 previously sworn by the Court, testified under oath as
 19 follows:
 20 VOIR DIRE EXAMINATION
 21 BY MR. BEACH:
 22 Good afternoon, Ms. Hargrove. How are you doing? My
 23 name is Andy Beach, along with Andrea Handley, we are going to
 24 be conducting the jury selection phase of this capital murder
 25 case on behalf of the State.

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1 To our left, Karo Johnson and Paul Brauchle, they are
 2 attorneys here in town, and they represent the defendant. He
 3 is the man at the end of the counsel table, that's Wesley
 4 Ruiz.
 5 THE DEFENDANT: Good afternoon.
 6 MR. BEACH: Now, is it quieter back there in
 7 that jury room than on that school bus that you drive
 8 everyday?
 9 PROSPECTIVE JUROR: No, I drive -- it's for
 10 Grand Prairie High School, and I drive the juvenile justice
 11 detention route.
 12 MR. BEACH: Are there police on the bus?
 13 PROSPECTIVE JUROR: No.
 14 MR. BEACH: Just you?
 15 PROSPECTIVE JUROR: Just me.
 16 MR. BEACH: Any other special precautions,
 17 anything like that?
 18 PROSPECTIVE JUROR: No.
 19 MS. HANDLEY: You can handle them?
 20 PROSPECTIVE JUROR: Yes.
 21 MR. BEACH: Listen, while you are down here is
 22 because we have looked at your questionnaire, and I bet we
 23 have looked at over a thousand of these in the last eight
 24 weeks, okay. And both sides kind of -- we call out the people
 25 that we know have no chance of being on this jury, those being

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1 the ones who believe that the death penalty is appropriate in
 2 every murder case. The ones that believe the death penalty is
 3 never appropriate or don't believe in the death penalty. They
 4 would not be qualified jurors under the law, the way the law
 5 is here in Texas. On your questionnaire you circled number
 6 two there on the first page; that is, you believe that the
 7 death penalty could be appropriate in some murder cases. And
 8 guess what, that's what the law is here in Texas. And that's
 9 why we got you to come back down here today. I don't think we
 10 are going to spend a whole lot of time with you, we want to
 11 talk to you a little bit about how a trial like this works.
 12 And make sure that you are qualified to be on this jury, okay.
 13 Now, have you ever been on jury duty before?
 14 PROSPECTIVE JUROR: I have had jury duty, but I
 15 have never actually sat on a jury.
 16 MR. BEACH: Okay. And you were in the Marines;
 17 is that right?
 18 PROSPECTIVE JUROR: Yes.
 19 MR. BEACH: What were you discharged out of?
 20 PROSPECTIVE JUROR: What base?
 21 MR. BEACH: Yes.
 22 PROSPECTIVE JUROR: Camp Lejeune, North
 23 Carolina.
 24 MR. BEACH: And did you meet your husband in the
 25 Marines?

1 PROSPECTIVE JUROR: Yes, I did.
 2 THE MR. BROOKS: From your question, looks like
 3 married, divorced, marry again?
 4 PROSPECTIVE JUROR: Yes.
 5 MR. BEACH: Is this better this time around?
 6 PROSPECTIVE JUROR: Definitely.
 7 MR. BEACH: Amazing how a few more years of
 8 maturity kind of helps on a deal like that. Who is Jonathan
 9 McCullum to you?
 10 PROSPECTIVE JUROR: He used to be a neighbor,
 11 but he now lives in Mansfield. He is still a friend.
 12 MR. BEACH: Still a friend. Now, you understand
 13 the allegation in this case involved the murder of a peace
 14 officer, while that peace officer was in the line of duty. We
 15 have had a lot of jurors come down here, and some jurors have
 16 brothers that are police officers; and basically again, we
 17 can't help your life experience, everybody is going to know
 18 police officers. But to be a qualified juror in this case,
 19 you would have to be able to assure us, the Defense and the
 20 Judge the fact that you had a former neighbor who was a
 21 jailer, this being a peace officer case that would not unduly
 22 influence you?
 23 PROSPECTIVE JUROR: It wouldn't.
 24 MR. BEACH: You in good shape on that?
 25 PROSPECTIVE JUROR: I am fine with that.

1 MR. BEACH: You are here because you are in line
 2 with what the law is here in Texas; that is, the death penalty
 3 is appropriate in some very special limited murder cases. And
 4 one of those being the murder of a peace officer, okay. If
 5 you murder a jailer, a prison guard while you are trying to
 6 escape from prison, that potentially could be a death-penalty
 7 case. Okay. If you murder a child under the age of six,
 8 that's a potential death-penalty case. And the other category
 9 of capital murder versus what we just call regular murder
 10 involves the most common example, if I go into a convenience
 11 store -- if I go into a 7-Eleven to rob the store and I murder
 12 the clerk behind the counter, a murder while in the course of
 13 committing another serious felony, that is a capital murder
 14 case where potentially you could be exposed to the death
 15 penalty. But other than those very few fact situations, those
 16 are the only fact situations where the State could even seek
 17 the death penalty here in this state. So the very exclusive
 18 limited and not very often used, despite what you read in the
 19 media, very seldom used situation here in Texas.
 20 Any criminal trial, whether a death penalty trial or DWI
 21 simple as that, basically the same. There are a few
 22 difference in a case like this that we are going to talk
 23 about.
 24 At the first part of the trial every criminal trial is
 25 the same. And it has the same basic laws that you would be

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 1 able to assure me, the Defense, that you would be able to
 2 follow. And I don't know if you remember back three or four
 3 weeks ago when you were down here three or four weeks ago,
 4 Judge White went over some of the basic ground rules that
 5 apply in any criminal case. And really the only request that
 6 you are going to be called upon to answer in the first part of
 7 the question, is he guilty or not guilty. You are not going
 8 to be called upon as to whether he gets a life sentence or
 9 death penalty, it is guilty or not guilty.

10 What are the rules that you have to be able to follow in
 11 the first part of the trial. Like the Judge told you a few
 12 weeks ago, as he sits here right now, Wesley Ruiz, he is
 13 presumed to be innocent. You haven't heard any evidence in
 14 this case. You don't know anything about this case. It is
 15 his right, it would be your right if you were charged with a
 16 criminal offense, we do all the accusing in this case, we have
 17 to do all the proving. So you have to look to us to this side
 18 of the courtroom for all the evidence in this case. And we
 19 have to convince you beyond what?

20 PROSPECTIVE JUROR: A reasonable doubt.
 21 MR. BEACH: Absolutely, that he is guilty
 22 exactly as charged in the indictment in this case. Until we
 23 prove that to you beyond a reasonable doubt, that presumption
 24 of innocence is in effect.

25 PROSPECTIVE JUROR: Right.

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 1 MR. BEACH: He is presumed to be innocent.
 2 Can you follow that law?
 3 PROSPECTIVE JUROR: Yes.
 4 MR. BEACH: And can you make us prove everything
 5 that we are required to prove to you beyond a reasonable doubt
 6 before you would find him guilty?
 7 PROSPECTIVE JUROR: Yes.
 8 MR. BEACH: Now, what do we have to prove in
 9 this case? Well, it is on that half page piece of paper
 10 there. Take just a second to look at it. While you are doing
 11 that, I will paraphrase.
 12 We have to prove that on or about a certain date, that
 13 Wesley Ruiz, knowingly and intentionally caused the death of
 14 that police officer, by shooting him with a firearm, okay.
 15 And when he committed that murder, he knew that peace officer
 16 that he was murdering was acting in the line of duty. Okay.
 17 We have to prove all those things to you. Okay. We can't
 18 prove three out of four or four out of five. Let me use kind
 19 of a farfetched example, Ms. Hartgrave.
 20 If we prove everything in that indictment, but we fail to
 21 bring to you evidence, or worst yet, we prove that the murder
 22 took place in Kaufman County. One of the things we have to
 23 prove there in the indictment is that this murder took place
 24 in Dallas County, Texas, okay. We have had almost a year now
 25 to investigate this case, to word that piece of paper anyway

1 we wanted to. And the corresponding obligation, ma'am, we
 2 have to prove to you everything in there. Even something as
 3 simple sounding as the county where the murder took place. If
 4 we don't, Judge White will instruct you and the other 11
 5 jurors, the State dropped the ball, they didn't do what they
 6 were supposed to do under the law. We are sorry, but you
 7 would have to find this man not guilty, even though if you
 8 knew that this man committed the murder. It would make you
 9 sick. And we would get fired the next day for doing something
 10 that stupid. But that is to illustrate your mind what your
 11 obligation would be in being a juror in this case.

12 Could you follow that law, ma'am?

13 PROSPECTIVE JUROR: Yes.

14 MS. HANDLEY: And the last thing.

15 MR. BEACH: The last thing we want to talk to
 16 you about, and again because it is our burden of proof, we are
 17 the ones that did the accusing in this case, you have to look
 18 to us. All they have to do is be here. And they are going to
 19 be here everyday. Okay. And I know one of the corollaries
 20 for that is, I am sure you are aware of is, that every
 21 defendant has a Fifth Amendment right to testify if they want
 22 to but they don't have to. And there are all kinds of reasons
 23 why defendants don't testify in their own behalf. But for
 24 whatever the case, this defendant, or a defendant in any
 25 criminal case chooses not to testify in their own behalf,

1 Judge White would instruct you that they have that right and
 2 you can't hold that failure to testify against them for any
 3 reason whatsoever, you understand that?

4 PROSPECTIVE JUROR: Yes.

5 MR. BEACH: And could you follow that law,
 6 ma'am?

7 PROSPECTIVE JUROR: Yes.

8 MR. BEACH: Now, what happens at the end of the
 9 first part of this trial? Let me kind of analogize it to a
 10 two-act play. Well, the first act is that we prove everything
 11 to you beyond a reasonable doubt, is he guilty or not guilty.
 12 If we don't do it, whether it is Dallas County, or the way the
 13 police officer was murdered, guess what?

14 PROSPECTIVE JUROR: Not guilty.

15 MR. BEACH: You find him not guilty, the trial
 16 is over, there is no act two, okay. Now, let's assume,
 17 though, so we can go on, that there is going to be an act two
 18 and we have proved this case to you beyond a reasonable doubt.
 19 It would be your obligation pursuant to your oath at that time
 20 to find the defendant guilty because we had done what we were
 21 supposed to do, we had proven the case to you beyond a
 22 reasonable doubt.

23 You with me?

24 PROSPECTIVE JUROR: Yes.

25 MR. BEACH: Could you and would you find him

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1 guilty if we found him guilty beyond a reasonable doubt?
 2 PROSPECTIVE JUROR: Yes.
 3 MR. BEACH: Now, just like you went to a play,
 4 at the end of act one, at the end of guilt/innocence phase of
 5 the trial, the curtain comes down, you and the other jurors go
 6 out in the hall for intermission; and guess what, you don't
 7 know how the play is going to end, do you?
 8 PROSPECTIVE JUROR: No.
 9 MR. BEACH: You have to come back for the second
 10 act. That's where in a capital murder case where the State is
 11 seeking death is a little different than any other murder
 12 case. Some folks believe that once a defendant is found
 13 guilty of capital murder, it is automatic, automatic he is
 14 going to get the death penalty. There shouldn't be an act
 15 two. If they think like that, they wouldn't be a qualified
 16 juror in this case. Really to be a juror, as a qualified
 17 juror need to have the exact opposite mind-set.

18 The mind-set should be just like you presumed him to be
 19 innocent at the first part of the trial until we proved to you
 20 beyond a reasonable doubt that he was guilty, once you found
 21 the defendant guilty at the first part, as we go into the act
 22 two of the punishment phase, the law really wants you to
 23 presume that a life sentence without parole is the appropriate
 24 punishment. That should be your mind-set going in. And not
 25 until the State brings to you evidence, additional evidence,

1 which we are entitled to do, convinces you that that life
 2 sentence should be elevated up to a death sentence, not until
 3 then would you ever vote for a death sentence.
 4 You see how that is supposed to work?

5 PROSPECTIVE JUROR: Yes.

6 MR. BEACH: And could you do that, ma'am?
 7 PROSPECTIVE JUROR: Yes.

8 MR. BEACH: And there is nothing automatic about
 9 what penalty someone gets once convicted of capital murder.
 10 The best that they will get is a life sentence without the
 11 possibility of parole. Unless he escapes from prison, because
 12 he is going to die in prison because he is going to be there
 13 for the rest of his natural life. It doesn't matter in prison
 14 if he finds a cure for cancer or brings peace to the Middle
 15 East, he is never going to get out of pen. That's the best
 16 that he is looking at if he is found guilty of capital murder.

17 That's why the legislature -- the law here in Texas is as
 18 you go in once, that life sentence remains or he gets the
 19 death sentence, you have to look to us for additional proof
 20 that convinces you and 11 other jurors that life sentence
 21 should be elevated up to a death sentence.

22 Can you do that?

23 PROSPECTIVE JUROR: Yes.

24 MR. BEACH: So you go in to the punishment phase
 25 believing that the life sentence is the appropriate

1 punishment. How are we able to convince a jury to elevate
 2 that life sentence up to a death sentence? Well, it has to do
 3 with answering these two questions. I want you to take a few
 4 seconds to read that first question to yourself, ma'am.

5 PROSPECTIVE JUROR: (Juror complies.)

6 MR. BEACH: You get an idea what the legislature
 7 is asking you there of that question?

8 PROSPECTIVE JUROR: Yeah.

9 MR. BEACH: Here is the deal before someone gets
 10 a death sentence here in Texas. The legislature wants the
 11 same jury to make two determinations, number one, in act one
 12 is he guilty of capital murder. That's got to be the first
 13 hurdle we have to overcome before we are even in the ball park
 14 of a death penalty, okay. Now, before you get to that
 15 question, obviously you have already answered that question in
 16 the affirmative in the first part of the trial, yes, he is
 17 guilty of capital murder and that's why we are going on to
 18 part two, okay?

19 PROSPECTIVE JUROR: Uh-huh.

20 MR. BEACH: Now, again, before we -- before we
 21 are entitled to a death sentence, the legislature want that
 22 same jury not only to be convinced beyond a reasonable doubt
 23 that he is a capital murderer, exactly as charged in the
 24 indictment, but would you agree with me that that question is
 25 also asking you to prove to you and the 11 other jurors that

1 that now convicted capital murderer is going to be a future
 2 danger to society. That's what that question is basically
 3 asking you, right?

4 PROSPECTIVE JUROR: Yes.

5 MR. BEACH: So before we are entitled to elevate
 6 that life sentence up to a death sentence, we have to convince
 7 you and 11 other jurors that the defendant is going to be a
 8 continuing threat to society and a future danger, because in
 9 all probability he will continue to commit criminal acts of
 10 violence. That's what we have to prove to you.

11 You understand at that?

12 PROSPECTIVE JUROR: Yes.

13 MR. BEACH: Like we discussed Ms. Hartgrave,
 14 going in to answering that question, basically you are to
 15 assume that the answer to that question is "no". What is the
 16 effect of "no" in special issue number one, he stays at a life
 17 sentence.

18 PROSPECTIVE JUROR: Right.

19 MR. BEACH: For us to have that "no" erased and
 20 a "yes" put in there, we have to convinced you and the 11
 21 jurors that he is going to be in all probability a continuing
 22 threat to society. How do we do that?

23 What kind of evidence would help You determine if someone
 24 was going to be a future threat to society. Anything come to
 25 mind?

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1 PROSPECTIVE JUROR: Not off the top of my head,
 2 no.

3 MR. BEACH: A lot of folks tell us, listen, if I
 4 had to drive that school bus everyday, if I went down there
 5 tomorrow, I wouldn't know the first thing about it. So we
 6 know you are a fish out of water right now. And that's fine.
 7 A lot of folks tell us to learn about defendant's past. Was
 8 this an isolated, one-time incident, everything kind of
 9 converged and he committed a capital murder? Or was this a
 10 part of pattern behavior that you can have seen coming from a
 11 mile off? Has he lived his life continuously consistent to
 12 this criminal pattern, it just wasn't a great surprise that
 13 what happened on the day of the alleged murder happened, okay.

14 Would that kind of evidence be helpful to you in terms of
 15 making that determination?

16 PROSPECTIVE JUROR: Yes.

17 MR. BEACH: Okay. And there could be other
 18 evidence, but that's kind of primary -- obviously, you know
 19 the facts of the offense themselves could, you know, help you
 20 determine whether or not someone was going to be a continuing
 21 threat to society; is that correct?

22 PROSPECTIVE JUROR: Yes.

23 MR. BEACH: But the bottom line, ma'am, is, we
 24 have to convince you to erase that "no", that presumed "no",
 25 we have to convince you beyond a reasonable doubt that he will

1 be a continuing threat to society and we have to bring to you
 2 evidence to prove that to you.

3 And would you require us to do that?

4 PROSPECTIVE JUROR: Yes.

5 MR. BEACH: Again, you understand they don't
 6 have to prove anything, it is not their burden. It is our
 7 burden, we have to prove everything in that question to you
 8 beyond a reasonable doubt before we would be entitled to a
 9 "yes" answer, okay?

10 PROSPECTIVE JUROR: Uh-huh.

11 MR. BEACH: And you would make us do that?

12 PROSPECTIVE JUROR: Yes.

13 MR. BEACH: Now, what is the effect of a yes
 14 answer to that first question? Well, the effect is now at
 15 that point in time in the trial, that life sentence has been
 16 elevated up to a death sentence. Because now not only have we
 17 proved that he is guilty of capital murder, we have also
 18 convinced the jury beyond a reasonable doubt that he is going
 19 to be a future danger to society.

20 You with me on that?

21 PROSPECTIVE JUROR: Yes.

22 MR. BEACH: That's how we get from a life
 23 sentence up to a death sentence, through competent evidence
 24 and competent proof in this case.

25 Is the play over, not yet. Even though we have convinced

1 you beyond a reasonable doubt he is a capital murderer and a
 2 future danger to society, you still got one more thing to look
 3 at. Take a minute to read that second question to yourself.
 4 PROSPECTIVE JUROR: (Juror complies.)
 5 MR. BEACH: That's a little tougher one to
 6 understand, you with me?

7 PROSPECTIVE JUROR: Uh-huh.
 8 MR. BEACH: Especially that personal moral
 9 culpability. Basically what we try to do is simplify for
 10 people like you. Now you know the defendant is sitting on a
 11 death sentence, what the legislature want the jury to do
 12 before that death sentence is etched in stone forever, that's
 13 the way it is going to be, they want that same jury to go back
 14 one more time and re-examine everything and try to determine
 15 from the evidence, is there something about this defendant,
 16 about his background, about the way he was raised, did he have
 17 severely abusive parents that kind of tortured him all his
 18 life. Was he almost mentally retarded, very he very slow? He
 19 just that had a very low I.Q. that kept him from seeing things
 20 the way other folks do. They want you to go back to see
 21 things that would convince that jury that even though he has
 22 earned a death sentence, this particular defendant, mercy is
 23 the thing and a life sentence is appropriate punishment. It
 24 is a hard hoop to get you to go from life to death back to
 25 life. That's what the legislature wants you to do, to

1 re-examine that one last time. The legislature wants the
 2 jury, if they just feel so compelled by something in the
 3 evidence, even though they know the defendant deserves a death
 4 sentence, there is something about this defendant that
 5 everyone believe we should spare his life and give him a life
 6 sentence, something about his background, whatever it is going
 7 to be, this question gives the jury the opportunity to do
 8 that.

9 You with me on that?
 10 PROSPECTIVE JUROR: Yes.
 11 MR. BEACH: My question is, if there was
 12 something sufficiently mitigating, something that lessens his
 13 blameworthiness, something that lessens his moral culpability,
 14 the point where you believe, Ms. Hartgrave, that he has earned
 15 a death sentence, could you take that death sentence back to a
 16 life sentence if you believed the evidence convinced you to do
 17 so?

18 PROSPECTIVE JUROR: Yes.
 19 MR. BEACH: Do you have any questions of me?
 20 I appreciate your patience and I think you could be a
 21 good juror in this case and we appreciate I coming down here
 22 today.

23 THE COURT: Thank you, Mr. Beach.
 24 MR. JOHNSON: May it please the Court?
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1 VOIR DIRE EXAMINATION
 2 BY MR. JOHNSON:
 3 Good afternoon. My name is Karo Johnson. I have a few
 4 questions for you as well. There are no right or wrong
 5 answers to any of these questions.
 6 We understand that you don't sit around your dinner table
 7 at home talking about the death penalty?
 8 PROSPECTIVE JUROR: No.
 9 MR. JOHNSON: When you got the questionnaire
 10 thrust into your hand and saw the 18-page list of questions,
 11 it was probably things you hadn't given a lot of thought to
 12 before you had to write answers to; am I right about that?
 13 PROSPECTIVE JUROR: Yes, sir.
 14 MR. JOHNSON: You got your questionnaire?
 15 PROSPECTIVE JUROR: Yes, I do.
 16 MR. JOHNSON: You had anything -- you had a
 17 chance to go back over it?
 18 PROSPECTIVE JUROR: I looked at it, yes.
 19 MR. JOHNSON: Anything that you had changed or
 20 said it was wrong?
 21 PROSPECTIVE JUROR: No.
 22 MR. JOHNSON: You told Mr. Beach that one of the
 23 things you do in your job, did I hear you say you transport
 24 juveniles?
 25 PROSPECTIVE JUROR: Yes.

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1 MR. BRAUCHLE: Is that from the juvenile
 2 detention center?
 3 PROSPECTIVE JUROR: On I-30 and Hampton.
 4 MR. JOHNSON: Are you picking them up taking
 5 them to school?
 6 PROSPECTIVE JUROR: I do a regular high school
 7 run up to 40 students, drop them off at high school. Then I
 8 have 11 students, it was 12 until Friday, one got released on
 9 Friday; but I have 11 students now that I pick up at their
 10 house every morning, take them to Dallas, and then I pick them
 11 up in the afternoon and I take them home.
 12 MR. JOHNSON: Those are juvenile delinquents?
 13 PROSPECTIVE JUROR: They have been to court, the
 14 Judge has said now you have to go here to school. You can't
 15 be trusted at regular school, so you are now going to the
 16 juvenile detention center for school.
 17 MR. JOHNSON: But that's something you didn't
 18 actually put in your answer?
 19 PROSPECTIVE JUROR: That is part of my regular
 20 job.
 21 MR. BRAUCHLE: You left that out when you filled
 22 this thing out?
 23 PROSPECTIVE JUROR: I am a school bus driver and
 24 that's what I do.
 25 MR. JOHNSON: On page 14 where you talk about

1 your military service --
 2 PROSPECTIVE JUROR: Yes.
 3 MR. JOHNSON: -- now, I may be wrong about this,
 4 did you leave the Marines with a higher rank than your
 5 husband?
 6 PROSPECTIVE JUROR: My husband got out with a
 7 medical discharge a year before I did.
 8 MR. JOHNSON: But I am talking about a rank?
 9 PROSPECTIVE JUROR: Yes, I was higher rank
 10 when I got out.
 11 MR. JOHNSON: So does he still follow your
 12 orders?
 13 PROSPECTIVE JUROR: He never did follow my
 14 orders.
 15 MR. JOHNSON: And also on page 14, when it asks
 16 about your religious, political and other activity --
 17 PROSPECTIVE JUROR: Uh-huh.
 18 MR. JOHNSON: -- I see what you put down there.
 19 And I am not going to -- I am going to respect, except for I
 20 do have to ask you a couple of things about it?
 21 PROSPECTIVE JUROR: Okay.
 22 MR. JOHNSON: I kind of need to know if you do
 23 have a religious preference, is it something that is kind of
 24 considered to be a main extreme type of religious preference,
 25 it is not like some cult?

1 PROSPECTIVE JUROR: I say a Episcopalian and
 2 My husband is Pentecostal? We don't go to church on a regular
 3 basis.
 4 MR. JOHNSON: It actually got my curiosity. Oh,
 5 my God, she is in some kind of killer cult?
 6 PROSPECTIVE JUROR: No.
 7 MR. JOHNSON: Something like that, no animal
 8 sacrifice. Now, a few questions on page four of your
 9 questionnaire. It asks you about how strongly you feel about
 10 the death penalty on the scale of one to ten, and you put down
 11 an eight.
 12 PROSPECTIVE JUROR: Uh-huh.
 13 MR. JOHNSON: And ten being the strongest,
 14 right; you understood that?
 15 PROSPECTIVE JUROR: Yes.
 16 MR. BRAUCHLE: So eight, you have a pretty
 17 strong feeling about the death penalty?
 18 PROSPECTIVE JUROR: Yes.
 19 MR. JOHNSON: I take it you have a strong
 20 feeling in favor of the death penalty; is that correct?
 21 PROSPECTIVE JUROR: In certain situations, yes,
 22 if everything is proven, I feel in some situations it is
 23 warranted and some it is not.
 24 MR. JOHNSON: All right. You also put down that
 25 you don't think the death penalty is ever misused?

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1 PROSPECTIVE JUROR: From what I have read,
 2 you know and seen, I don't think so?
 3 MR. JOHNSON: Another thing you put down was, it
 4 asked do you think that spending a life time in prison is
 5 equivalent to the death penalty? And you put, no. Can you
 6 explain what you meant by that answer?
 7 PROSPECTIVE JUROR: In my opinion, if it is
 8 proven that it was a harsh and it was intentional and the
 9 person didn't care what happened to the other person, is life
 10 imprison equal to the death penalty, no, it is not. If he
 11 intentional -- if it is proven that he intentionally went out,
 12 said you are a police officer, bang, I am going to kill you.
 13 Then, yeah, I feel that the death penalty would be probably
 14 sufficient. Until I hear the evidence, I don't know, you know
 15 which way I would go.
 16 MR. JOHNSON: Okay, let me ask you this way,
 17 between life imprison without parole and the death penalty,
 18 which one of those two do you think is the more severe
 19 punishment?
 20 PROSPECTIVE JUROR: Life imprison.
 21 MR. JOHNSON: You think life imprison is more
 22 severe than the death penalty?
 23 PROSPECTIVE JUROR: Well, yeah, cause they will
 24 never -- they will never be out from behind those bars if they
 25 get life imprison. But in death -- I just buried my

1 father-in-law yesterday, they are released.
 2 MR. JOHNSON: Okay. All right. I just got a
 3 little bit more to talk to you about.
 4 And I sympathize with you where you are.
 5 One other thing you put down on the next page is asked if
 6 you believe police officers are more likely to tell the truth
 7 than the average person? You put more likely?
 8 PROSPECTIVE JUROR: I believe they are more
 9 likely to be honest.
 10 MR. JOHNSON: Briefly to these two special
 11 issues up here.
 12 PROSPECTIVE JUROR: Yes.
 13 MR. JOHNSON: You understand that if the State
 14 proved this case beyond all reasonable doubt, you get to those
 15 two issues, correct?
 16 PROSPECTIVE JUROR: Yes.
 17 MR. JOHNSON: And you understand if they prove
 18 to you what they have to prove in special issue number one and
 19 they prove that beyond all reasonable doubt, then that's how
 20 the person gets sentenced to death?
 21 PROSPECTIVE JUROR: Yes.
 22 MR. JOHNSON: So where you find yourself at that
 23 point is, if you have convicted somebody of capital murder and
 24 you have now decided that they are a future danger and there
 25 is nothing that can be done to protect any aspect of society

1 from them, the only thing that can be done is to actually kill
 2 them; you understand that's where you would be at that point?
 3 PROSPECTIVE JUROR: Yes.

4 MR. JOHNSON: Then it asks you to go to the
 5 second issue and decide on mitigating, okay.

6 You understand that's what the second issue is?

7 PROSPECTIVE JUROR: Yes.

8 MR. JOHNSON: What do you think of about in that
 9 question that would be mitigating to you under those
 10 circumstances, does anything come to mind?

11 PROSPECTIVE JUROR: Their background, their
 12 history, as a child. I think in some situations could
 13 possibly, you know, change my opinion on whether or not to
 14 give the death penalty or to make it life imprison.

15 MR. JOHNSON: Okay. But back on page three, you
 16 feel like if somebody knowingly killed a police officer, you
 17 feel pretty strong that the death penalty would be something
 18 you would consider and possibly give this punishment in that
 19 type of case?

20 PROSPECTIVE JUROR: It would be something that
 21 I would consider, but you know I would have to see the facts.

22 MR. JOHNSON: Okay. All right. You have any
 23 questions?

24 PROSPECTIVE JUROR: No, sir.

25 MR. JOHNSON: For any of us? Okay, well, we

1 thank you for your time?

2 THE COURT: Thank you, Ms. Hartgrave. You may
 3 step down.

4 (Prospective juror retired from the courtroom.)

5 MR. BEACH: The State finds Juror No. 69-E,
 6 Corine Hartgrave, to be on acceptable.

7 THE COURT: Thank you Mr. Beach.

8 MR. JOHNSON: Judge, we would submit this juror
 9 for cause based on several factors. The first factor being
 10 that she did not tell us in her questionnaire that she
 11 actually was involved with law enforcement in regard to
 12 transporting juvenile delinquents that are part of -- that she
 13 has hidden that from us. There is no telling what she might
 14 have been hiding.

15 We submit her on the fact that she favors police officer
 16 testimony over civilian testimony. That she is very strongly
 17 in favor of the death penalty. That she does not think that
 18 the death penalty is ever misused.

19 And under Morgan v. Illinois, she is unable to adequately
 20 give meaning to the mitigation. And on the basis of all those
 21 factors and the tenor of her testimony here and the
 22 questionnaire, we ask that she be struck for cause.

23 THE COURT: Mr. Beach, any response?

24 MR. BEACH: Judge, I think she consistently
 25 indicated that she could follow the law. There is nothing to

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1 predetermine that she would have to hear the evidence no
 2 matter what the issue was and she can be fair to both sides in
 3 this case.

4 THE COURT: I will deny the Defense's request.

5 MR. JOHNSON: Well, Judge, based on that
 6 erroneous ruling and the erroneous rulings previously to this
 7 that we have had to use peremptory challenges on that we
 8 should not have, we would respectfully request the Court to
 9 give us an additional peremptory challenge to use on this
 10 juror, which -- and that's Juror No. 69-E, Ms. Hartgrave.

11 THE COURT: The Court will grant the Defense a
 12 second additional strike.

13 MR. JOHNSON: We will use that second additional
 14 challenge on this juror, Judge.

15 THE COURT: If you will bring in Ms. Hartgrave.

16 THE BAILIFF: All rise for the juror.

17 (Prospective juror entered the courtroom.)

18 THE COURT: You may be seated.

19 Ms. Hartgrave, we appreciate your patience. You have
 20 been excused as a juror in this case. So you are free to go.

21 PROSPECTIVE JUROR: Okay.

22 THE COURT: Thank you very much.

23 (Prospective juror retired from the courtroom.)

24 (Recess taken.)

25 THE COURT: Back on the record concerning Juror

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1 10, Gene Gage.

2 What says the State?

3 MS. HANDLEY: The State would accept this juror,
 4 James D. Gage.

5 THE COURT: What says the Defense, Mr. Johnson?

6 MR. JOHNSON: Judge, we would submit Juror No.
 7 10-G for cause, based on his answers regarding special issue
 8 number one, and his opinion that probability could be as low
 9 as 10 percent, which is contrary to the law. And because of
 10 his position on that, we would -- we would submit that juror
 11 10-G, Mr. Gage. We would submit him for cause and ask that he
 12 be struck.

13 THE COURT: Response by State?

14 MS. HANDLEY: Your Honor, Mr. Gage with respect
 15 to the probability after the law was explained to him, he agreed
 16 that he would in fact follow the law and hold that to greater
 17 than 50 percent. And he is qualified.

18 THE COURT: The Court holds that Mr. Gage is
 19 qualified and deny the Defense's request.

20 MR. JOHNSON: Well, Judge, based on that
 21 erroneous ruling regarding Juror Gage and previous erroneous
 22 rulings regarding our request for strike for cause, we would
 23 ask the Court to give us an additional peremptory challenge to
 24 be used on this unacceptable juror 10-G, Mr. Gage.

25 THE COURT: The Court will deny that request.

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1 MR. JOHNSON: Note our exception.
 2 (Pause in the proceedings.)
 3 THE BAILIFF: All rise for the juror.
 4 (Prospective juror entered the courtroom.)
 5 THE COURT: You may be seated.
 6 Good afternoon, Mr. Cannady. How are you?
 7 PROSPECTIVE JUROR: Fine, thank you.
 8 THE COURT: Apologize for the little bit of
 9 delay. Sometimes the interviews run a little longer than we
 10 anticipate.
 11 The attorneys have some questions to ask you regarding
 12 your qualifications as a juror in this case. There aren't any
 13 right or wrong answers to the questions. They are merely
 14 trying to see how you feel about certain issues.
 15 The State will proceed first.
 16 And is it Ms. Handley doing voir dire?
 17 MS. HANDLEY: Yes, Your Honor.
 18 May it please the Court?
 19 CURTIS CANNADY
 20 was called as a prospective juror, after having been
 21 previously sworn by the Court, testified under oath as
 22 follows:
 23 VOIR DIRE EXAMINATION
 24 BY MS. HANDLEY:
 25 Let me make sure I am pronouncing your name correctly.

1 Cannady?
 2 PROSPECTIVE JUROR: Yes.
 3 MS. HANDLEY: Good afternoon, Mr. Cannady, my
 4 name is Andrea Handley. These gentlemen are Marshall McCallum
 5 and Andy Beach. We are Assistant District Attorneys and we
 6 are all responsible for selecting the jury for this particular
 7 case.
 8 And to my left is Mr. Karo Johnson and Paul Brauchle.
 9 They are defense attorneys. They represent the gentleman
 10 seated at the end of the table down there, Mr. Wesley Ruiz?
 11 THE DEFENDANT: Good afternoon.
 12 MS. HANDLEY: Mr. Cannady, let me tell what you
 13 is going on. We had you come down with a lot of people and
 14 fill out this questionnaire as you recall. And we did that
 15 several weeks in a row and we accumulated hundreds and
 16 hundreds of questionnaires. Since that time, believe it or
 17 not, we have read them all. And we have called out of that
 18 just a select number of individuals to come down here to the
 19 courtroom to talk to on a one-on-one basis with the purpose of
 20 feeling out just a little bit more about your feelings on the
 21 death penalty. Also talk to you about the criminal law a
 22 little bit. And in particular on how a capital murder case
 23 works.
 24 You had an opportunity to read your questionnaire, sir?
 25 PROSPECTIVE JUROR: Yes.

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1 MS. HANDLEY: Tell me is there anything that you
 2 would change in your questionnaire if called upon to do that
 3 again, would you expand on anything? I know we get you down
 4 here, we thrust this big survey into your hand, which is
 5 probably the last thing you thought you would do and put you
 6 in those uncomfortable seats out there, a lot of people kind
 7 of race through it and leave some blanks. Is there anything
 8 you would expand on for us?
 9 PROSPECTIVE JUROR: There was the law in
 10 Texas, voluntarily intoxication does not constitute a Defense.
 11 MS. HANDLEY: Yes, sir.
 12 PROSPECTIVE JUROR: And I checked no. And I
 13 think I should have checked yes in that one.
 14 MS. HANDLEY: So you would put that you agree
 15 with that law?
 16 PROSPECTIVE JUROR: Yes, that's correct.
 17 MS. HANDLEY: Okay. And let me just -- let me
 18 narrow your focus then to -- let's go to page four. And you
 19 know we had asked you, started asking your opinions about the
 20 death penalty. And I should have put on a scale of one to ten
 21 how strongly you felt about it. And then we had some
 22 questions about it with respect to Texas and our use of the
 23 death penalty and you left those blank at that point. Let me
 24 feel you out a little bit about that?
 25 PROSPECTIVE JUROR: Actually I lost my place

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1 and I went to the next page. I read that, the three questions
 2 that I left blank, do you feel the penalty in Texas is too
 3 often or too seldom used? And on that I would say it is -- I
 4 really don't feel that either too often or too seldom.
 5 Because all the cases are on an individual basis and so, you
 6 know it -- if that's the way it works out, that's the way it
 7 is.
 8 MS. HANDLEY: You are confident for whoever who
 9 may have received the death penalty, it was proper for that
 10 particular case then?
 11 PROSPECTIVE JUROR: In most -- yes.
 12 MS. HANDLEY: Okay. And I will tell you reading
 13 your questionnaire, I get that impression from you, sir, you
 14 recognize and have a good appreciation that in any criminal
 15 case, you always do what is right for that particular case?
 16 PROSPECTIVE JUROR: Yes, that's right.
 17 MS. HANDLEY: And in fact, you served on a
 18 criminal jury before?
 19 PROSPECTIVE JUROR: Yes, I have.
 20 MS. HANDLEY: And in this case, I am thinking
 21 that you found the defendant guilty of manslaughter, but the
 22 Judge assessed the punishment in this case?
 23 PROSPECTIVE JUROR: That's the way --
 24 MS. HANDLEY: You weren't called upon to assess
 25 punishment?

1 PROSPECTIVE JUROR: That's correct.
 2 MS. HANDLEY: Okay. Let me -- let's bring it
 3 around to what we are doing here today, just so we are singing
 4 off the same sheet of music, so you know where I am coming
 5 from. I feel comfortable speaking for myself and -- also this
 6 is Mr. Kevin Brooks, Mr. Cannady, he is going to be
 7 offering -- or bringing forth the evidence in the actual case.

8 I will tell you that we have had time to look at this
 9 case, and we have a single goal in mind; and that is, to get a
 10 conviction of capital murder against the defendant in this
 11 case and to go one step further and to secure an assessment of
 12 death penalty versus life imprisonment. I will tell you that's
 13 what we intend to do and that is our goal. Just to let you
 14 know there are no surprises about it. I tell you that, sir,
 15 because I believe we have the type and quality of evidence
 16 that will convince 12 people that that is the proper thing to
 17 do for this particular case.

18 Not a lot of people are familiar with exactly what the
 19 consequences of that are, other than kind of a vague idea.
 20 But what would happen, Mr. Cannady, having returned a verdict
 21 for a death sentence, at that point Judge White here, he would
 22 have really no say in the matter. He can't come in and second
 23 guess you or change your verdict. At that point he is called
 24 upon to essentially sign a death warrant, setting a date in
 25 the future for the execution of the defendant in the case. At

1 that point he is transferred out to East Texas.

2 Have you ever been to Huntsville, Texas.

3 PROSPECTIVE JUROR: I have been through
 4 Huntsville, yeah.

5 MS. HANDLEY: A lot of people have been through
 6 Huntsville. It is a way to get to Houston oftentimes. And it
 7 is a town really dedicated to the study of criminal justice,
 8 the housing of inmates, and it is where we carry out our
 9 actual executions. He would be housed in a prison out there
 10 in Livingston, Texas, until the day before his execution. And
 11 on that day before, he is going to be transported from
 12 Livingston, Texas to downtown Huntsville, Texas. There is a
 13 very old prison system there and they call it the Walls Unit,
 14 and it is where we actually carry out our executions.

15 He is going to be put in an isolated cell prior to that
 16 time. And on the day of his execution, they will allow the
 17 defendant to have one last visitation. He can have an
 18 opportunity to visit with family if he has it, a spiritual
 19 adviser, if he so incline. Whoever it is, but he has got that
 20 opportunity. He would also have that opportunity for that
 21 last meal that people often hear about or read about. He can
 22 order whatever he wants as long as it is on the prison system
 23 menu. But he would be given that last meal, and he would sit
 24 there and eat that alone.

25 He would stay in that cell by himself until six o'clock,

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1 because that's when we do executions in Texas. And at six
 2 o'clock, sir, he is going to be taken from an isolated cell,
 3 down a narrow hallway to what we refer to as the death
 4 chamber. And whether he goes voluntarily or kicking and
 5 screaming, he is going to go. Because there are people who
 6 are trained to get him from one place to another.

7 He would be brought into that death chamber. It is a
 8 small room. It is very industrial looking, sterile. And he
 9 would be placed on a hospital bed or a gurney. And at that
 10 time, they would strap him down. And another individual would
 11 actually place an intravenous line into his arm.

12 In that small room on the side, there are two windows
 13 there, and they both have curtains on them. Now, after he is
 14 strapped down and secured with the line, these curtains will
 15 open up. And on one side the defendant could have
 16 representative of his family, his lawyer if he wants them
 17 there, whoever he wants there to -- at that time to watch the
 18 actual execution. The other side of the room when the curtain
 19 pulls back, there will be five people there as representatives
 20 of the victim's family.

21 Once that is done, he could make that last statement, you
 22 know we often hear about that. And I am sure that you can
 23 imagine, sir, over the course of the years, many things have
 24 been said. Anything from I am sorry, and I beg for
 25 forgiveness down to people just proclaiming their innocence

1 until they take their last breath. But regardless of what is
 2 said, nothing is going to change at that point. And there is
 3 going to come a time then once he is finished or once he is
 4 cut off from having his say, that the warden is going to give
 5 a nod to another individual.

6 This person would begin to hit a series of buttons and
 7 they are designed to do three things. It is going to start a
 8 flow of chemicals into his vein. The first thing it does is
 9 it sedates his body. Basically paralyzes him if you will.
 10 The second thing that happens, it collapses his lungs. The
 11 third thing that happens is ceases his heart. Whether it
 12 takes four seconds, six seconds or eight seconds, as long as
 13 it takes, until a medical doctor walks over and pronounces him
 14 dead.

15 I don't walk you through that scenario to be morbid, but
 16 to bring to the forefront what we are talking about here.

17 We are in a clean nice courtroom right now, we are all
 18 being courteous to one another. It doesn't get anymore
 19 serious than what we are talking about here in life and death.

20 And I paint that picture for you to make sure we are all
 21 really focused on the task at hand. And what we are asking
 22 you to potentially play a part in?

23 PROSPECTIVE JUROR: I understand.

24 MS. HANDLEY: Pardon me?

25 PROSPECTIVE JUROR: I understand.

1 MS. HANDLEY: And having given you that
 2 scenario, knowing in your heart, sir, the question becomes if
 3 you believe we proved the case to you beyond a reasonable
 4 doubt, if you are convinced of the evidence points toward a
 5 sentence of death versus life imprison, are you the type of
 6 individual that can take part in a process that would
 7 eventually caused the death of not a fictional character but a
 8 man seated about 30 feet away from you?

9 PROSPECTIVE JUROR: Yes, I could make a
 10 judgment on that.

11 MS. HANDLEY: Okay. I notice it seemed like
 12 some thoughtful hesitation, and I will tell you that of the
 13 people who have been selected of the jury, that's pretty much
 14 the reaction that they have. Nobody is a hundred percent
 15 comfortable with that. It is not an easy task and we
 16 appreciate that you do have that kind of hesitation. And it
 17 seems to me that you would take this very seriously. It is
 18 not an easy thing to do and needs to be given some serious
 19 consideration. Okay.

20 Let me talk to you just a little bit about -- let's talk
 21 a little bit more about the death penalty, have your feelings
 22 always been the same about the death penalty?

23 PROSPECTIVE JUROR: Yes. I can't say that I
 24 have ever changed my mind one way or the other. I have always
 25 been in favor of it.

1 MS. HANDLEY: Okay.
 2 PROSPECTIVE JUROR: Of the death penalty.
 3 MS. HANDLEY: And if you had an option to do
 4 away with the death penalty then, would you not do that, you
 5 say you have always been in favor of the death penalty?

6 PROSPECTIVE JUROR: I wouldn't oppose doing
 7 away with it, but -- but I still believe that if, you know the
 8 crime is like I said in my questionnaire, is horrific enough
 9 and if people in the right, I guess you would say, frame of
 10 mind, they should know what they do, if they do a crime that
 11 the death penalty is the punishment, then they should
 12 understand that's what is going to happen.

13 MS. HANDLEY: Do you think it is a deterrent to
 14 others?

15 PROSPECTIVE JUROR: It doesn't seem to be, so I
 16 guess -- no, I don't.

17 MS. HANDLEY: And then what purpose do you think
 18 it serves then?

19 PROSPECTIVE JUROR: It -- I guess we are just a
 20 violent society and it is just part of our culture to, you
 21 know for a person to pay the ultimate price for the ultimate
 22 crime I guess you could say.

23 MS. HANDLEY: Okay. Okay. And you understand,
 24 Mr. Cannady, that the death penalty is not necessarily an
 25 automatic thing that happens. It is whether or not somebody

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1 receives the death penalty is a question for a jury to decide
 2 based on the facts and the circumstances of the case at hand,
 3 nothing is ever automatic in a capital murder case. Just
 4 because an individual is found guilty of capital murder
 5 doesn't mean that they automatically will receive the death
 6 sentence. That is a question for the jury to decide.

7 You have been on jury duty before. So I am not really
 8 going to belabor the process of how that works. I think you
 9 have a real appreciation of how that works already. There are
 10 fundamental laws that play into a part in any criminal case.
 11 And you probably took those to task, the jury you sat in. In
 12 order to be a qualified juror, you had to agree to follow the
 13 law and you had to agree to assess your verdict based on the
 14 evidence in the case, correct?

15 PROSPECTIVE JUROR: Yeah.

16 MS. HANDLEY: So when I say these things to you,
 17 until a defendant is proven guilty beyond a reasonable doubt
 18 by the State, you are to presume him innocent, that makes
 19 sense to you?

20 PROSPECTIVE JUROR: Yes.

21 MS. HANDLEY: And it is a law that you would
 22 agree to follow?

23 PROSPECTIVE JUROR: Yes.

24 MS. HANDLEY: And along that line, you would
 25 always look to the State to prove this case. You would never

1 look to the defendant to prove him innocent, you will always
 2 look to the State, correct?

3 PROSPECTIVE JUROR: Yes.

4 MS. HANDLEY: Something that you would hold to
 5 us that burden also?

6 PROSPECTIVE JUROR: Yes.

7 MS. HANDLEY: And to prove to us beyond a
 8 reasonable doubt. Reasonable doubt being a standard of proof.
 9 A burden of proof, it is the highest in our system. It is not
 10 preponderance of the evidence, clear and convincing. It is a
 11 high burden of proof, and you would agree to hold us to that
 12 highest burden of proof, would you not?

13 PROSPECTIVE JUROR: Yes, I could do it.

14 MS. HANDLEY: There may not be a definition to
 15 beyond a reasonable doubt. Really it is at this point, what
 16 you think it is. Some people say I would have to be certain,
 17 I would have to be sure, I would have to be able to sleep at
 18 night. That's how I know what reasonable doubt is. Suffice
 19 it to say, it is the absolutely highest burden of proof.

20 And another fundamental of law is the defendant's right
 21 not to testify against himself. Remain silent. If the
 22 defendant chooses to exercise that constitutional right and
 23 not testify in his case, then the law says you can't hold that
 24 against him, you can't use that as evidence against him.

25 Is that a law that you would agree to follow in a

1 particular case?
 2 PROSPECTIVE JUROR: Yes.
 3 MR. JOHNSON: I guess it is worth repeating one
 4 more time. We have to prove absolutely every element in the
 5 indictment to you. Just as they had to prove to you in that
 6 manslaughter case I believe it was that you sat on. No
 7 element is any less important than another, you know. I have
 8 to prove that on or about a particular date, in Dallas County,
 9 Texas, the defendant did knowingly or knowingly take the life
 10 of a police officer while he was in the line of duty. He knew
 11 he was a police officer, and he did it by shooting him with a
 12 firearm. Each of those elements I have to prove. I don't get
 13 credit for five out of six, but all of them, correct?

14 If I fail to carry my burden, if I fail to prove any one
 15 of those offenses, his honor will instruct you that you must
 16 return a verdict of not guilty.

17 You understand that also?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: It is a far-out example, but let's
 20 say I fail to bring you any evidence whatsoever to prove that
 21 it happened in Dallas County, you would agree with me that it
 22 is an essential element of the indictment. I don't think that
 23 would happen. We have had a year to get ready for this case,
 24 we know our case very well. But if we failed to prove Dallas
 25 County, Texas, the Judge would instruct you that you must

1 return a verdict of not guilty.
 2 And would you follow that law also?
 3 PROSPECTIVE JUROR: Yes, sir.
 4 MR. BEACH: Make you sick to your stomach,
 5 probably, but it goes to your qualifications as a juror and
 6 your ability and willingness to follow the law. And so it may
 7 be an extreme example, but it goes to that qualification issue
 8 will you follow the law, even in a far-out example like that?
 9 Did you have any problems that you sat on before, basing
 10 your verdict on the facts in those cases?
 11 PROSPECTIVE JUROR: No.
 12 MS. HANDLEY: And is it your agreement that you
 13 would do that in this case?
 14 PROSPECTIVE JUROR: Yes.
 15 MS. HANDLEY: I will tell you, Mr. Cannady, a
 16 lot of people have come in with the assumption if you find an
 17 individual guilty of capital murder, that means they will
 18 automatically receive the death penalty. In fact it doesn't
 19 work that way at all. From most criminal cases. In most
 20 criminal cases you find the defendant guilty and you would go
 21 back and you consider what the punishment range and things
 22 such as that. Death-penalty cases are a little bit different.
 23 An individual found guilty of capital murder, they are
 24 looking at one or two things going to happen. They are going
 25 to receive life imprisonment without parole or the death penalty.

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1 One of two things is going to happen, okay, once you are found
 2 guilty of capital murder. And what we don't do, is we don't
 3 have you good back there and round-table discussion, which
 4 sounds better, life or death. Instead what happens is the
 5 jury in the second phase of the trial, you are presented with
 6 more evidence at that time. And you go back and you answer
 7 instead a series of questions. Based on how you answer the
 8 questions will determine whether or not a defendant will
 9 receive life imprisonment without parole or death.

10 You with me so far?

11 PROSPECTIVE JUROR: Yes.

12 MS. HANDLEY: There is nothing automatic about a
 13 case -- about a capital murder case. Nobody automatically
 14 receives the death sentence. It is something that has to be
 15 arrived at by a jury after deliberation and by a consideration
 16 of evidence in a case. But having said that, assuming that
 17 you have found the defendant guilty of capital murder, you are
 18 now going into the second phase of the trial, and you decide
 19 what punishment is going to be. And at that point what is the
 20 best that you could hope for at that point?

21 PROSPECTIVE JUROR: The best he?

22 MS. HANDLEY: What would be the best?

23 PROSPECTIVE JUROR: I guess it would be life
 24 imprisonment, he wants to live as long as possible.

25 MS. HANDLEY: The best he could hope for is life

1 imprisonment. It's life or death at that point. You recognize
 2 that in the first part of the trial, you are to give the
 3 defendant a presumption of innocence until I prove to you that
 4 he is guilty beyond a reasonable doubt?

5 PROSPECTIVE JUROR: Correct.

6 MS. HANDLEY: Once I prove that to you, that
 7 presumption goes away and you may find him guilty.

8 In the second phase of a capital murder trial, there is
 9 another presumption that comes into play. Going into the
 10 second part of the trial where you decide if it is life versus
 11 death, the defendant enjoys a presumption also. And the
 12 presumption is this, Mr. Cannady, the law says that at that
 13 point you as a juror must presume that life imprisonment without
 14 parole is the proper thing to do, okay. Just because you
 15 found him guilty of capital murder, doesn't mean he
 16 automatically should get death. You go in presuming that life
 17 imprisonment is the proper thing to do. And it goes to our burden
 18 of proof once again, I am sure you could appreciate me asking
 19 you to find a death sentence. Before you do that, wouldn't
 20 you want to be darn sure that was the absolute thing to do?

21 PROSPECTIVE JUROR: Yes.

22 MS. HANDLEY: And that's the way it should be.
 23 And we are asking you to do that, so we ought to have to prove
 24 to you that it is right thing to do. Going in your
 25 presumption before you heard anything from us, your

1 presumption is that life is the proper thing to do, right.
 2 And it doesn't change until I convince you beyond a reasonable
 3 doubt that it ought to be death.

4 PROSPECTIVE JUROR: Yeah.

5 MS. HANDLEY: And will you agree to do that,
 6 Mr. Cannady, that even though you found him guilty of capital
 7 murder, you will go into the second phase assuming that life
 8 is the proper thing to do?

9 PROSPECTIVE JUROR: Yes.

10 MS. HANDLEY: And you will hold on to that
 11 presumption until I prove to you beyond a reasonable doubt
 12 that it should be different?

13 PROSPECTIVE JUROR: Yes.

14 MS. HANDLEY: As I said, the way you get to that
 15 stage, that final conclusion by answering questions. And the
 16 first question we have you answer as a juror is actually that
 17 first special issue on there. Go ahead, if you will, take a
 18 look at that and -- take a look at that and read it to
 19 yourself.

20 PROSPECTIVE JUROR: (Juror complies.)

21 MS. HANDLEY: It is not the greatest question in
 22 the world, it is not an easy one. We often call that question
 23 the future dangerousness issue. And I will tell you this,
 24 Mr. Cannady, you have gone in presuming that life is the
 25 proper thing to do at this point, right? Only until that

1 question is answered "yes", does that life sentence become a
 2 death sentence. And basically what they are calling upon
 3 there, has the State proved to you beyond a reasonable doubt
 4 that this defendant will probably commit criminal acts of
 5 violence that would constitute a continuing threat to society.
 6 If you and the other jurors answer that question "yes", he is
 7 now sitting on a death sentence, that's the way you get from
 8 life to death. In order for you to answer that question
 9 "yes", as you can see, evidence beyond a reasonable doubt. In
 10 order for you to answer that "yes", I have to prove to you
 11 beyond a reasonable doubt that the answer to that question
 12 should be "yes".

13 Does that make sense to you?

14 PROSPECTIVE JUROR: Yes.

15 MS. HANDLEY: Now, keeping in mind he is already
 16 sitting on a life imprison, isn't it?

17 PROSPECTIVE JUROR: Yes.

18 MS. HANDLEY: That's where he is going to be
 19 until the day he dies. What we didn't write there, those are
 20 written by the legislature for these particular cases. And
 21 when they wrote that question and they ask you to answer it,
 22 what they didn't do for you was to define certain terms in
 23 that question. We already talked about the first part, beyond
 24 a reasonable doubt. That goes to my burden of proof. And it
 25 is whatever you think it is, but it is that high burden of

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1 proof, right?

2 They are asking you to make a determination as to how
 3 this defendant is going to act in the future. Well, what
 4 society is he in at that point where is he going to be for the
 5 rest of his life?

6 PROSPECTIVE JUROR: In prison.

7 MS. HANDLEY: And I am sure you will agree with
 8 me, when we first hear of society, I think of where I work,
 9 where I go to shop, my neighbors. That that's a society that
 10 you and I live in and move around in. And I think it is fair
 11 to say that what they are contemplating there is that prison
 12 could also constitute and be a society of itself, right?

13 PROSPECTIVE JUROR: Yes.

14 MS. HANDLEY: That within a prison you have not
 15 only do you have inmates, you have a guards, you have wardens,
 16 administrative personnel, teachers, doctors, nurses. You have
 17 people coming in to visit. You got volunteers coming in to
 18 put on programs.

19 So would your definition of society, could you also
 20 consider that prison can also be considered a society too?

21 PROSPECTIVE JUROR: Yes.

22 MS. HANDLEY: Maybe a smaller society within our
 23 greater society?

24 PROSPECTIVE JUROR: Yes.

25 MS. HANDLEY: So they are requesting you to make

1 a call on how he is going to act within the society that he is
 2 in. They start up by asking you if you think there is a
 3 probability. Well, they don't define probability for you
 4 either. That's another word that is not defined.

5 But would you agree with me that there is a huge
 6 difference between something being possible and something
 7 being probable?

8 PROSPECTIVE JUROR: Yes.

9 MS. HANDLEY: I am sure you heard that
 10 expression, "Anything is possible." No matter how outlandish
 11 it would be. Possibly I could win the lottery tomorrow. It
 12 is possible. Is it probable, I don't know. But with respect
 13 to whether or not something is a probability, that's for you
 14 to decide what that is. Some people say that in their
 15 definition, they consider it more likely than not something is
 16 probable. Or if something is probable, there is greater than
 17 a 50 percent chance is what that word means is probable.

18 Do you see any different definition for probable or do
 19 you have a different one?

20 PROSPECTIVE JUROR: No.

21 MS. HANDLEY: So you wold agree with me then, it
 22 is more likely than not or at least a greater than 50 percent
 23 chance?

24 PROSPECTIVE JUROR: Yes.

25 MS. HANDLEY: Okay. That the defendant would

1 commit criminal acts of violence. Once again, Mr. Cannady,
 2 they don't provide for you what is the other crimes. So do
 3 you think it is proper the defendant would commit a
 4 kidnapping? They haven't been very specific about it. They
 5 just said he will commit a criminal act of violence. It is
 6 for you to decide what criminal act of violence.
 7

8 My co-counsel sitting here just minding him business
 9 right now; and if I just popped him in the face and knocked
 10 him out of the chair, would you consider that a criminal act
 11 violence?

12 PROSPECTIVE JUROR: Yes.

13 MS. HANDLEY: Okay. Certainly violent. I would
 14 tell you it is certainly an assault, something that I could be
 15 held to trial for at this courthouse here. But again what
 16 constitutes a criminal acts of violence is for you, Mr.
 17 Cannady, to decide, okay. And they are talking about
 18 probability that he would do these criminal acts and be a
 19 continuing threat to what society?

20 PROSPECTIVE JUROR: Prison society.

21 MR. BEACH: In order for you to answer that
 22 question "no", presumably we will bring you more evidence.
 23 You can consider the circumstances of the offense that you
 24 just found him guilty of. And you could consider any other
 25 evidence that we brought you that may convince you to answer
 "yes" versus "no".

1 Let me ask you, what kinds of things do you think that
 2 you would have to know or see or hear on whether or not the
 3 person was going to be a future danger to society?

4 PROSPECTIVE JUROR: I would need to know the
 5 actions that he has done in the past. I guess in that same
 6 society. You look at the way he is acting, you know around
 7 the people that he is with.

8 MS. HANDLEY: Sure. A lot of people have told
 9 us at times the best predictor of future activity is how have
 10 you acted in the past. Was it a one-time anomaly this crime
 11 he committed or has this been a pattern of criminal behavior
 12 that culminated into this crime, and who is surprised by it?
 13 So they look at past activity.

14 Anything else that you think would be important to you in
 15 making that determination?

16 PROSPECTIVE JUROR: No.

17 MR. BEACH: And it is hard for me to put you on
 18 the spot. And really there are no right or wrong answers
 19 here, and I can't commit you to anything in particular. What
 20 it comes down to, Mr. Cannady, you are looking to us that he
 21 is going to be that future danger. And you are allowed to
 22 look at the crime that he committed. And you are allowed to
 23 look at any other evidence brought before you to make that
 24 determination.

25 You answer that question "no", then that life sentence

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1 that you think is the most proper thing to do, stays a life
 2 sentence, okay. And that's it. If, however, you look at the
 3 evidence and are convinced beyond a reasonable doubt that the
 4 answer to that question is actually "yes", then that life
 5 sentence that you presumed was the proper thing to do, has now
 6 been elevated up to a death penalty. And so now he is looking
 7 at the death penalty. But you are not done yet. He has now
 8 earned a sentence of death, but it is not over yet. You have
 9 to answer one more question before we can make that final
 10 determination. And that second question is that special
 11 second issue there.

12 Go ahead and take a moment to read that to yourself.

13 PROSPECTIVE JUROR: (Juror complies.)

14 MS. HANDLEY: What do you think that question is
 15 asking you?

16 PROSPECTIVE JUROR: If based on his past actions
 17 that he is, ah, maybe should be spared the death penalty.

18 MS. HANDLEY: You are right on point. I believe
 19 you are right on point, Mr. Cannady. That's basically what it
 20 is asking you there. You know, cause keep in mind you found
 21 him guilty of capital murder, right? And at this point you
 22 found that, yes, he is a future danger to society, correct, so
 23 he has earned his death sentence. They are going to let you
 24 answer one more question right there. Look at everything now.
 25 Look at all the evidence once again. Even though you found

1 him guilty of capital murder, he is a future danger to
 2 society, is there something there? Is there something about
 3 his character, is there something about his background, is
 4 there something about his personal moral culpability or
 5 blameworthiness that would warrant bringing that death
 6 sentence down to a life sentence instead. I think another
 7 way or looking at it, they are going to make sure that when
 8 you leave the courthouse that day you are not going to walk
 9 out going, you know what, he was guilty of capital murder, and
 10 yeah, he was in future danger, I agree; but there was some
 11 more evidence that I thought was very compelling, that I
 12 thought warranted consideration and I thought quite frankly
 13 sufficient enough, mitigating enough that it should have been
 14 brought back down to life. And that's basically what that
 15 questions gives you, it gives you that opportunity to show
 16 some mercy.

17 What they are looking at there, they are asking you to
 18 find are there sufficient mitigating circumstances. I can't
 19 tell you what a sufficient mitigating circumstance is. It is
 20 whatever you may think it is. And I am not going to put you
 21 on the spot and ask you, you know, what you think is a
 22 sufficient mitigating circumstance is. You may or may not be
 23 able to tell us right now. But what the question asks you,
 24 and in order for you to be a qualified juror, the question is
 25 this, if you, Mr. Cannady, after having found him guilty, if

1 you saw something in the case that you felt warranted bringing
 2 that death sentence back down to a life sentence, would you in
 3 fact do it?

4 PROSPECTIVE JUROR: No.

5 MS. HANDLEY: And why do you say no, sir?

6 PROSPECTIVE JUROR: Because -- I look at, you
 7 know the actions, the crime, you know what happened, and then
 8 I just can't see, you know, having mercy or being lenient
 9 after everything that has happened.

10 MS. HANDLEY: Is it that you can't at this
 11 point, you can't think of what would constitute a sufficient
 12 mitigating circumstance?

13 PROSPECTIVE JUROR: No.

14 MS. HANDLEY: And at this point you are not
 15 called upon to tell us what would be a sufficient mitigating
 16 circumstance. You haven't seen anything in the case. We
 17 can't tell you to tell us something. It could be anything.
 18 The question used to have to do more was a focus on folks with
 19 retardation. We cannot execute the mentally retarded in the
 20 United States.

21 Let's say for example that you have somebody who may not
 22 be academically or technically mental retarded. They don't
 23 think like you and I do. They don't have the same mental
 24 processes and appreciation for what is going on around them.
 25 They are not mentally retarded, but they are pretty darn

1 close. Or maybe there is something about the defendant's
 2 background, maybe from the time he was born, Mr. Cannady,
 3 maybe his parents abused him from the time he was born. And
 4 he was consistently and mentally and physically and sexually
 5 abused. And while that is not necessarily an excuse for
 6 criminal behavior, but maybe you look at that, and you think
 7 you know what, they raised him to act and be this way. And
 8 quite frankly his parents ought to be on trial with him. It
 9 doesn't mean he is not guilty and it doesn't necessarily
 10 excuse it. But it is a circumstance the maybe his personal
 11 blameworthiness is not entirely his own. Or maybe there is a
 12 circumstance about the particular offense. Maybe he is the
 13 guy who stood around and tried to resuscitate the victim and
 14 tried to call for help.

15 I can't get you to tell me what would be a sufficient
 16 mitigating circumstance. The question becomes this, the
 17 question becomes, if you saw it, Mr. Cannady, if you looked at
 18 the evidence in the case and you said, you know what, I think
 19 that is a sufficient mitigating circumstance that warrants
 20 bringing the sentence back down to life, the question becomes,
 21 would you do it?

22 PROSPECTIVE JUROR: I guess I would. I don't
 23 mean to sound contradicting to what I am say, but when you
 24 mentioned retardation, that would be one of the main concerns.

25 MS. HANDLEY: And not technically mentally

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1 retarded. There may be --

2 PROSPECTIVE JUROR: I guess I would. You know,
 3 I would.

4 MS. HANDLEY: Okay. If you saw it, if you
 5 thought it was sufficient and you thought it was mitigating,
 6 if you saw it, then you could do it and you would do it. But
 7 telling me what it is today, is kind of hard for you?

8 PROSPECTIVE JUROR: Oh, yeah, absolutely.

9 MS. HANDLEY: Okay. And it is kind of a mental
 10 gymnastics what we have done here, because you have found him
 11 guilty of capital murder. You believe he is a future danger,
 12 you know, but now we are asking you to do kind of a 180, and
 13 say let's bring it back down to life. But again, it is there,
 14 because if that fact and circumstances exists, where
 15 Mr. Cannady thinks in my heart and in my mind, I think it
 16 should come back down. And so if you saw it, then you are
 17 saying that you would and you could bring that sentence back
 18 down to a life sentence?

19 PROSPECTIVE JUROR: Yes.

20 MS. HANDLEY: Okay. Are there any questions you
 21 have of me about the process or the law. Anything else that
 22 you think that we need to know about the death penalty or what
 23 we have been talking about?

24 PROSPECTIVE JUROR: No.

25 MS. HANDLEY: We both have an opportunity to ask

1 you questions. So I am going to have these gentlemen, let
 2 them have a chance to talk to you now. Pass the juror.

3 THE COURT: Thank you, Ms. Handley.
 4 Mr. Johnson or Mr. Brauchle.

5 MR. BRAUCHLE: Thank you, Your Honor. May we
 6 have a brief recess Your Honor?

7 THE COURT: You may.

8 Mr. Cannady, if you will step down, we will take about a
 9 ten-minute break.

10 (Prospective juror retired from the courtroom.)
 11 (Recess taken.)

12 (Prospective juror entered the courtroom.)

13 THE COURT: You may be seated.

14 Welcome back, Mr. Cannady.

15 And the Defense may proceed.

16 MR. BRAUCHLE: Thank you, Your Honor.

17 VOIR DIRE EXAMINATION

18 BY MR. BRAUCHLE:

19 Mr. Cannady, my name is Paul Brauchle. And during your
 20 break in the jury room, did you think of any questions or any
 21 aspect of what we had talked to you about during the first
 22 part of this that you wanted to ask us about?

23 PROSPECTIVE JUROR: No.

24 MR. BRAUCHLE: So you think you are pretty clear
 25 as to what was gone over with you?

1 PROSPECTIVE JUROR: Yes.
 2 MR. BRAUCHLE: One thing I wanted to ask you
 3 about was on page 18, the last page, that's asking if you have
 4 ever been convicted of a felony or any type of theft. And
 5 then it is probably not worded very well. But it says applied
 6 to you, is the above statement true and correct, and you
 7 checked, no. So --

8 PROSPECTIVE JUROR: It's an oversight on my
 9 part.

10 MR. BRAUCHLE: We have to make sure about that.
 11 We are not accusing you of anything. And a lot of people do,
 12 and I think next time we use this form, we will probably
 13 change the small print there to where it is a little easier to
 14 understand. As it applies to you, you have -- the answer
 15 should be, yes, then?

16 PROSPECTIVE JUROR: That's correct.

17 MR. BRAUCHLE: Okay. Not a problem.
 18 In regard to the previous jury trial, it was a
 19 manslaughter, I believe; is that correct?

20 PROSPECTIVE JUROR: Yes, sir, I think it was
 21 vehicular manslaughter. It was a DUI where a man was
 22 convicted of driving and he ran -- he had an accident and it
 23 killed a passenger in another car.

24 MR. BRAUCHLE: Okay. Was there -- did he cross
 25 the median or anything like that, do you recall any detail?

1 PROSPECTIVE JUROR: Yeah. It was on Seagoville
 2 Road, which was under construction at the time. And he said
 3 it was a barricade and a lot of bad weather and he crossed the
 4 median and hit a car head on.

5 MR. BRAUCHLE: See Seagoville is kind of in your
 6 part of time, Garland; is that correct?

7 PROSPECTIVE JUROR: Yes, sir.

8 MR. BRAUCHLE: Do you know if he had been
 9 convicted of anything like that in the past?

10 PROSPECTIVE JUROR: According to the testimony,
 11 he had prior arrests, yes.

12 MR. BRAUCHLE: Any convictions that you
 13 remember?

14 PROSPECTIVE JUROR: I don't remember
 15 convictions.

16 MR. BRAUCHLE: Okay. Also you are involved in a
 17 lawsuit against TI for time involved with changing of
 18 protective clothing; is that correct?

19 PROSPECTIVE JUROR: Well, yes. It is not
 20 actually protective clothing. It is just a suit to prevent
 21 dust and particles and lint from entering the work area.

22 MR. BRAUCHLE: The way-through area?

23 PROSPECTIVE JUROR: Yes, where they produce
 24 waivers, that's correct.

25 MR. BRAUCHLE: Is that a class action?

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1 PROSPECTIVE JUROR: I don't know if you consider
 2 it a class action. I got a letter in the mail from some
 3 people who had started the suit and they said I could enter
 4 the suit, you know, because I work there. And so I filled out
 5 the questionnaire or called the number of the attorneys and
 6 they sent me a questionnaire. I filled out the questionnaire
 7 and then I am participating in the lawsuit.

8 MR. BRAUCHLE: You know how far it has gone or
 9 anything?

10 PROSPECTIVE JUROR: No. It's for lack -- like
 11 20 minutes of pay per day. And basically it is for putting on
 12 your garment before you go to work and after you go to work,
 13 you are required to wear the garment; but they didn't pay us
 14 to put it on. So -- so I don't know how far it has gone. I
 15 went about six months ago to the attorneys and gave a
 16 deposition in that case, but I haven't heard anymore since
 17 then.

18 MR. BRAUCHLE: Okay. Let me just back up here
 19 and go over a little bit of stuff that the State has gone
 20 over. I think if we would have stopped you after you filled
 21 out this questionnaire and asked you what happens to people
 22 that are convicted of capital murder in the State of Texas,
 23 you would have probably said -- and this may or may not be
 24 right, you would probably say those people get the death
 25 penalty; would that be a correct statement?

1 PROSPECTIVE JUROR: Yes.

2 MR. BRAUCHLE: A lot of people think that's
 3 true. But you understand now from talking to Ms. Handley and
 4 hearing how the system works, actually what is -- what happens
 5 when you are convicted of capital murder, you get life without
 6 parole; you understand that. And only if this first special
 7 issue over here is answered "yes", do you get death; you
 8 understand that?

9 PROSPECTIVE JUROR: Yes.

10 MR. BRAUCHLE: And of course if they don't prove
 11 that to you, if they don't prove enough information on that
 12 special issue where you answer that "yes", the person still
 13 gets life without parole. In other words life without parole
 14 is the default punishment at all stages in the trial. If they
 15 are found guilty, they get life without parole.

16 Let's just say that the Judge looks over and says, okay,
 17 present the rest of your evidence in the punishment phase, and
 18 they say, We don't have any. Well, you couldn't answer any of
 19 those special questions or those special issues, so the person
 20 would still be the same after you found him guilty, he would
 21 only get life imprisonment. And I take it from your answer and
 22 everything, that you don't have a quarrel with that being the
 23 punishment for somebody found guilty of capital murder; is
 24 that a correct statement?

25 PROSPECTIVE JUROR: Yes.

1 MR. BRAUCHLE: You understand that capital
 2 murder is the intentional taking of a human life without any
 3 legal excuse or justification? In other words, it is an
 4 intentional murder. I want my co-counsel dead. I decide I
 5 want him dead and I do whatever it takes to get him dead. It
 6 is a thumbnail and graphic description of an intentional
 7 murder.

8 Now, then, I could kill him, do all sorts of bad things
 9 to him. Since he is not anything other than a regular
 10 citizen, I could never get death. My punishment would be five
 11 years to 99 years or life; you understand that?

12 PROSPECTIVE JUROR: Yeah.

13 MR. BRAUCHLE: Capital murder is always murder
 14 plus something else. Killing a police officer, a fireman, a
 15 child less than six, a person over 65. It has to be murder
 16 plus. And only then can they be charged with a capital
 17 murder. And only then do these special issues come into play.

18 Look at special issue number one, you know you don't
 19 answer that unless you found that the person has been found
 20 guilty of capital murder. And in regard to that question, we
 21 want to ask you about probability. And I know you have got
 22 some accounting background. And you don't know if accountants
 23 have anything to do with statistics or whatever, but some
 24 people say that's a probability, just means that there is a
 25 chance that it will happen. I don't know what your definition

1 would be.

2 You have any ideas to what you think probability should
 3 or shouldn't be?

4 PROSPECTIVE JUROR: The chance that it might
 5 happen is a probability.

6 MR. BRAUCHLE: Okay. That's basically what
 7 almost everybody that we talk to said. However, the courts
 8 have said that probably has to mean more than 50 percent. See
 9 because if it doesn't mean more than 50 percent, it could
 10 happen or it couldn't happen. It would just be a chance, you
 11 see what I am saying?

12 PROSPECTIVE JUROR: Yes.

13 MR. BRAUCHLE: You say chance, we are not
 14 getting on to you for it, we didn't send this question home to
 15 you to think out and analyze. Can you see that it has got to
 16 mean more than 50 percent, or the word they could have used
 17 there would have just been chance, and of course anything can
 18 happen if there is a chance that anything can happen. Would
 19 you agree with me on that?

20 PROSPECTIVE JUROR: Yes.

21 MR. BRAUCHLE: Okay. Now, then, you also see
 22 that reasonable doubt is right in front of probability. So
 23 basically we think -- and the people over here don't agree
 24 with the people over there. And we can disagree as to what
 25 these means because the courts hadn't ever taken time to tell

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1 either side what they do mean. They just said that
 2 probability has to mean more than 50 percent and society can
 3 mean prison society. That's the only guidance we have. And
 4 that's not a lot when you have got all this complicated
 5 questions up here?

6 PROSPECTIVE JUROR: Right.

7 MR. BRAUCHLE: But you understand that our point
 8 of view is that reasonable doubt linked with probability, we
 9 think would probably, and there we go using probably, to talk
 10 about probability, that that would from our point of view mean
 11 that probability would have to be higher than 50 percent if it
 12 is linked with reasonable doubt.

13 Are you following me on that?

14 PROSPECTIVE JUROR: Yes.

15 MR. BRAUCHLE: In other words, if you are
 16 finding beyond a reasonable doubt that it is going to happen,
 17 we think that it should be more than 50/50 proposition. Cause
 18 see everything in there -- every question in that first issue
 19 has to be proven beyond a reasonable doubt. You know that he
 20 is going to be a continuing threat. That he is going to
 21 commit criminal acts of violence.

22 See what I am talking about?

23 PROSPECTIVE JUROR: Yes.

24 MR. BRAUCHLE: There is about three questions
 25 that you have to answer in that one question. I don't want to

1 bring back bad memories, but remember high school when we used
 2 to diagram sentences and break them up and all that. Used to
 3 be one of my worse nightmares, but I finally got over that.
 4 You can see they are asking you more than one thing in that
 5 one question. And basically we think that the shorthand
 6 version of that one question is asking you, is the person that
 7 you are dealing with, the person that you just found guilty of
 8 capital murder, is this person so dangerous that the only way
 9 that we can control him is kill him? You understand if you
 10 answer that question "yes", that's what happens to him. He
 11 gets killed.

12 I am not miss -- I am not trying to misstate it. Of
 13 course you would have to find "yes" there, and then the next
 14 special issue you would have to answer "no"; but the result of
 15 that would be death.

16 You understand that?

17 PROSPECTIVE JUROR: Yes.

18 MR. BRAUCHLE: You think that I am stretching
 19 the meaning of that first question or stretching the language
 20 there by taking the point of view that is basically it is
 21 asking you, is this guy so dangerous that he needs to be
 22 killed? Or can you see that in that question?

23 PROSPECTIVE JUROR: I see it in the question,
 24 yes.

25 MR. BRAUCHLE: Pardon?

1 PROSPECTIVE JUROR: Yes, I see that, basically.
 2 MR. BRAUCHLE: Now, then, I think Ms. Handley
 3 talked to you about special issue number two. And that -- if
 4 people come down here and have questions and problems with
 5 special issue number one, special issue two is a real killer.
 6 In that -- that might be a poor choice of words, people have a
 7 lot of trouble figuring out what they are asking for there.
 8 What they are asking, and I think Ms. Handley gave you an
 9 example, and it is not the only situation that could apply;
 10 but somebody who is slow to learn or whatever, that doesn't
 11 have the ability to control their actions or reactions as a
 12 normal person would or whatever. They are not mentally
 13 retarded or whatever. As you know from living this long in
 14 life, people have a lot of different abilities to cope with
 15 stress, life, what have you.

16 Would you agree with me?

17 PROSPECTIVE JUROR: Yes.

18 MR. BRAUCHLE: And that one right there kind of
 19 takes into consideration that not everybody that is tried for
 20 the death penalty has the same abilities or the same
 21 background, or the same intentions. We know that their
 22 intentions have to be such that they know what they were doing
 23 at the time. But it just gives you kind of -- we call it the
 24 safety net. It says if there is some question about this
 25 person and it is not addressed by special issue number one,

1 perhaps it is significant enough that we can address it in
 2 special issue number two.

3 Would you agree with that?

4 PROSPECTIVE JUROR: Yes.

5 MR. BRAUCHLE: You have any problem with that?

6 PROSPECTIVE JUROR: No.

7 MR. BRAUCHLE: Some people tell us, Look, you
 8 got to be crazy. I have just decided that somebody deserves
 9 to be killed and now you want me to let him off the hook.
 10 Well we didn't make up this plan. We didn't write these
 11 questions and this isn't some thing that we are down here and
 12 just jerking you around. This is the system that we have to
 13 work under. And the Court tells us, look, not everything can
 14 be addressed by the first question. And there may be special
 15 considerations on that that need to be considered in the
 16 second question.

17 Can you do that to give effect to special issue number
 18 two?

19 PROSPECTIVE JUROR: Yes, I could listen to the
 20 evidence, I guess, you call it, the evidence, opinions, and --
 21 and give it consideration to and see if it would overwhelm the
 22 "yes" decision on special issue number one.

23 MR. BRAUCHLE: Well, see it is asking you a
 24 whole bunch of deals. It says circumstances of the offense.
 25 That's how the murder took place. And there may be something

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1 about that that might be interesting or not or worthy of some
 2 consideration.
 3 It says the defendant's character and background. Not
 4 everybody that is tried on a criminal case have the same
 5 background. Some grow up rich, some grow up poor, some have
 6 bad character, some may have good character. You see that.
 7 Then that boils down to the personal moral culpability of the
 8 defendant, which means that perhaps there are things that
 9 would be somewhat out of the ordinary that would apply to the
 10 defendant.

11 And then the next thing it says, is there a sufficient
 12 mitigating circumstance or circumstances? See it could be one
 13 or more, it doesn't tell you what it is.

14 Let me give you an example. Let's say that Ms. Handley
 15 is on trial today and for whatever reason, you like the way
 16 she appeared in court. Now, that's not, as far as I know, a
 17 mitigating circumstance; but let's just say that there is
 18 something that the defendant or the person in court conveyed
 19 to you that made you feel less inclined to kill that person,
 20 mitigating circumstance.

21 See what I am saying?

22 PROSPECTIVE JUROR: Yes.

23 MR. BRAUCHLE: And somehow that influenced you
 24 enough that you said, yes, I could answer special issue number
 25 two "yes", okay. Let me back up and I am not trying to

1 confuse you on this. You notice up there in that special
 2 issue, it doesn't say beyond a reasonable doubt. There is no
 3 real burden on that. We don't have to prove something beyond
 4 a reasonable doubt nor does the State. It's just that there
 5 is something about the defendant that makes you think well, he
 6 deserves a break because of this. You can give it to him.
 7 Could you do that?

8 PROSPECTIVE JUROR: Yes.

9 MR. BRAUCHLE: Okay. Let me tell you something
 10 else, while we are going through the briar patch of that
 11 special issue. What may change your mind or what may be
 12 important to you doesn't have to be important to anybody else.
 13 In other words, we don't have to have 12 people that all think
 14 that Ms. Handley looked real nice in court today. See what I
 15 am saying. In other words, one person can say, well, I
 16 thought he was a good son. Another person can say, well, I
 17 thought he had a good work history. Another person could say,
 18 you know any number of things. See where I am coming from.
 19 And you don't have to sit back there and all agree, well, we
 20 all 12 agree that he had a good work history, because of that,
 21 we want to give him a break. It is just whatever applies to
 22 you and if it does or doesn't. But it doesn't have to be
 23 unanimous, and it doesn't have to be beyond a reasonable
 24 doubt.

25 Could you put that into effect?

1 PROSPECTIVE JUROR: Yes.
 2 MR. BRAUCHLE: Okay. Have I confused you
 3 enough?
 4 PROSPECTIVE JUROR: It is a lot of issues.
 5 MR. BRAUCHLE: Well, see, when you first look at
 6 them, they look fairly easy, but if you try and figure that
 7 each one of them is asking you about ten or so different
 8 things and going more than one direction at the same time,
 9 they become pretty complicated. And certainly we could spend
 10 a lot of time talking to people, but their minds go numb after
 11 about the first ten minutes and we don't get much past that.
 12 So our minds go numb after the first two or three minutes,
 13 cause we have to deal with these everyday.
 14 Let me talk to you real briefly about one other thing.
 15 You ever heard of self-defense?
 16 PROSPECTIVE JUROR: Yes.
 17 MR. BRAUCHLE: You believe in it?
 18 PROSPECTIVE JUROR: Yes.
 19 MR. BRAUCHLE: Basically it is deals with
 20 principal that you have the right to defend ourselves against
 21 unlawful attack to keep ourselves alive; is that the way you
 22 understand it?
 23 PROSPECTIVE JUROR: Yes.
 24 MR. BRAUCHLE: At some point self-defense could
 25 or could not be raised in this case, we don't know. To look

1 at it -- to look at it from the person who is claiming
 2 self-defense point of view. In other words, was I reasonable
 3 in believing that I needed to act to protect myself.
 4 See where I am coming from?
 5 PROSPECTIVE JUROR: Yes.
 6 MR. BRAUCHLE: It is not go ask the dead
 7 person's relatives or whatever like that. It is personal to
 8 me, and it has to be whether I am acting with a reasonable
 9 belief that I need to protect myself by killing someone.
 10 See where I am coming from?
 11 PROSPECTIVE JUROR: Yes.
 12 MR. BRAUCHLE: And if my belief is reasonable
 13 and I did act in a reasonable manner, then anybody that I kill
 14 is not -- that's not murder; you understand that? That is
 15 justifiable homicide.
 16 PROSPECTIVE JUROR: Yes.
 17 MR. BRAUCHLE: So I could kill people that I
 18 have a reasonable belief are trying to harm me in such a way
 19 that they are trying to take my life.
 20 You have any quarrel with that?
 21 PROSPECTIVE JUROR: You said you could kill
 22 people that you have a -- if you have a reasonable belief that
 23 they are going to take your life, I mean, what about
 24 surrender, other than kill, there are other alternatives than
 25 just killing someone.

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1 MR. BRAUCHLE: I understand that, and the law is
 2 a little more complicated. You used to have to have a duty to
 3 retreat. But I think the legislature has taken that out of
 4 the law. You know in the past if you were coming toward me
 5 with a weapon or put me in fear of imminent bodily injury or
 6 death, I used to have a duty to back up and retreat. But some
 7 of the changes in the law made it to where I don't have to do
 8 that as much. I don't want to get -- I don't want to spend a
 9 whole lot of time on this. I am just basically trying to see
 10 if you understand that it has to be a reasonable belief on my
 11 part. In other words, I can't kill somebody because I think
 12 they are a green-eyed Martian, or if they have a zap gun,
 13 those would not be reasonable beliefs. I have to have a
 14 belief that I can point to at that particular time I was
 15 acting in fear of my life.
 16 Would that jive with what you think on self-defense?
 17 PROSPECTIVE JUROR: Yes.
 18 MR. BRAUCHLE: Okay. Mr. Cannady, you will be
 19 glad to know that I don't have any more questions for you.
 20 Do you have any questions for me?
 21 PROSPECTIVE JUROR: No.
 22 MR. BRAUCHLE: Okay, thank you.
 23 THE COURT: Thank you, Mr. Brauchle.
 24 Mr. Cannady, you may step down.
 25 (Prospective juror retired from the courtroom.)

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1 THE COURT: You may be seated.
 2 MR. BRAUCHLE: Your Honor, I think that we want
 3 you to tell Mr. Cannady that we will get back with him as to
 4 his status.
 5 THE COURT: Put him on hold.
 6 MR. JOHNSON: Put him on ice.
 7 MR. BEACH: Judge, I think it is a real
 8 probability that he is going to be on the jury, we will let
 9 him know here in the next day or two.
 10 (Prospective juror entered the courtroom.)
 11 THE COURT: You may be seated.
 12 Mr. Cannady, there is a real probability that you will be
 13 one of the jurors on this case, what we are going to do is get
 14 back with you in a couple of days, and let you know. Since
 15 there is a chance that you will be on the jury, I will ask
 16 that you not research this case. If you see it on the news,
 17 the media or anything like that, just don't pay any attention
 18 to it until you get the official word from us. And we will
 19 let you know in about two or three days, by Friday at the
 20 latest.
 21 PROSPECTIVE JUROR: Thank you.
 22 THE COURT: Okay, you are free to go today.
 23 PROSPECTIVE JUROR: Thank you.
 24 (Prospective juror retired from the courtroom.)
 25 (Prospective juror entered the courtroom.)

1 THE COURT: You may be seated.
 2 Good afternoon, Ms. Conradt. How are you?
 3 PROSPECTIVE JUROR: I'm fine.
 4 THE COURT: I understand that you have been
 5 waiting quite a little while and we apologize for that.
 6 Sometimes these interviews run a little longer than we
 7 anticipate. We try to schedule folks where they don't have to
 8 wait so long so we appreciate your patience in that regard.
 9 The attorneys for both sides have reviewed their
 10 questionnaire and they have some questions with touching based
 11 on your qualifications as a juror in this case, there aren't
 12 any right or wrong answers, the attorneys are merely trying to
 13 see how you feel about certain things.

14 What says the State?

15 MR. BEACH: May it please the Court?

16 MACEY CONRADT
 17 was called as a prospective juror, after having been
 18 previously sworn by the Court, testified under oath as
 19 follows:

20 VOIR DIRE EXAMINATION

21 BY MR. BEACH:

22 Ms. Conradt, how are you doing. My name is Andy Beach.
 23 This is Andrea Handley. We are Assistant District Attorneys
 24 here in Dallas, and we are responsible for selecting the jury
 25 selection phase of this capital murder case.

1 To my left are Karo Johnson and Paul Brauchle. They are
 2 attorneys here in town; and they have the responsibility of
 3 representing the defendant in this case, and he is the man at
 4 the far end of counsel table.

5 THE DEFENDANT: Good afternoon.

6 MR. BEACH: That's Wesley Ruiz. Very
 7 interesting questionnaire that you have here. Especially the
 8 fact that you know two individuals that were murder victims
 9 that I can confirm because I know both of the individuals that
 10 kill John and Mary, both got the death penalty and have
 11 actually been executed. I played basketball with at the Texas
 12 Club with John back in the late 1980s, and happened to
 13 actually be in the courtroom over in Fort Worth where all this
 14 happened four days before it happen. It could have been me
 15 just as easily as it could have been John, so very personal
 16 connection in that case and saw the article recently in the
 17 Morning News about the boys and just an incredible story about
 18 how John's wife is raising them.

19 Did I attend any of the trial over in Fort Worth?

20 PROSPECTIVE JUROR: No, I did not.

21 MR. BEACH: How well did you know John?

22 PROSPECTIVE JUROR: I knew him well. He was my
 23 Sunday School teacher. I met him at church with his wife
 24 Martha, he was our first newly married Sunday School teacher.

25 MR. BEACH: Okay. And the Charles Boyd case,

1 the Mary Milligan case, my roommate was the prosecutor who
 2 actually tried that case back in 1980, whenever that was, 7,
 3 somewhere in there.

4 Did you attend any of that?

5 PROSPECTIVE JUROR: No.

6 MR. BEACH: How well did you know her.

7 PROSPECTIVE JUROR: She was a sorority sister
 8 and a roommate of my sister.

9 MR. BEACH: I am going to try to tie that in,
 10 your personal life experience with an answer that you gave
 11 here on a questionnaire. And that is, it would be very
 12 difficult for you personally to participate in a case where
 13 the State was seeking the death penalty. I can guarantee you
 14 that it could not have been an easy jury experience for any of
 15 the 12 people that served either on the John Edwards case, the
 16 Mary Milligan case. Nobody wants to ever involved in a case
 17 where the State is seeking the death penalty. It is not an
 18 easy thing to do. But we got to find 12 people and we got to
 19 find 12 people that even though it is not going to be easy, it
 20 is not going to be pleasant, it is going to be something that
 21 they are going to remember the absolute rest of their life can
 22 do it. If the evidence is such that the evidence compels, you
 23 know, a juror -- individual juror to do it.

24 Now, we -- we have this jury almost filled. So we need a
 25 couple more that are going to be able to assure the State and

1 the Defense and Judge White that even though it is not going
 2 to be easy, they could and would be able to participate in a
 3 trial where the ultimate result might be not some fictional
 4 character, but the man here in the courtroom someday being put
 5 to death, okay.

6 You have had a chance the last two weeks or so, I think
 7 probably -- you look like a conscientious human being to think
 8 more deeply now about how you feel about the death penalty.
 9 And more importantly, if you are the type of individual that
 10 could participate in a proceeding such as this. So as you sit
 11 here right now, do you believe, ma'am, that you could
 12 individually participate in a trial that may very well result
 13 at some date in the future the man at the end of counsel table
 14 building executed by lethal injection, if the evidence
 15 compelled you to do it?

16 PROSPECTIVE JUROR: A yes or no answer?

17 MR. BEACH: We are looking for a certain answer
 18 on that. Because you know yourself better than anybody else.
 19 And I am asking you this because our goal in this case is
 20 single-minded and single-focused; and that is, first of all,
 21 we believe we have the evidence that will convince 12 people
 22 that this man is guilty of capital murder exactly as charged.
 23 And secondly, we believe we have the type and quality of
 24 evidence that will convince that same jury that a death
 25 penalty is the appropriate punishment versus any other

1 possible punishment once you are found guilty of capital
 2 murder, and that's life without parole. That's our goal in
 3 this case. So we got to make sure going in that we have 12
 4 people, it may not be easy, may not be something that they
 5 ever thought they would be asked to do, but something now it
 6 is a reality and we are asking you could you and would you be
 7 able to participate in a proceeding such as this knowing what
 8 is at stake?

9 PROSPECTIVE JUROR: Yes.

10 MR. BEACH: I don't know how much you follow
 11 the progress of the George Lott case and the Charles Boyd case
 12 after the trial. As you know now both of those individuals
 13 have been executed. So you probably have a little more --
 14 maybe a little more insight about what happens after a death
 15 penalty is returned by whether it is a Dallas County jury or a
 16 Tarrant County jury.

17 Let me bring it through, I want to make sure you have a
 18 real realization what we are talking about in this case. If
 19 we are successful in proving that this man is guilty of
 20 capital murder and if we are successful in convincing 12
 21 jurors that a death penalty is the appropriate punishment and
 22 that jury recommends to Judge White that's what they believe
 23 the evidence requires him to do, Judge White would have no
 24 alternative but to accept the jury's verdict, assess his
 25 punishment at death. And at some date in the future, Judge

1 White would set an actual execution date. On the day before
 2 that execution day, they would go and get Wesley Ruiz from the
 3 death row facility there in Livingston, Texas, and take him by
 4 vehicle to downtown Huntsville, Texas.

5 Have you ever been down there?

6 PROSPECTIVE JUROR: No.

7 MR. BEACH: Right in the middle of downtown
 8 Huntsville is an old prison unit call the Walls. And that's
 9 where the death penalties are actually carried out. On the
 10 date of his predetermined execution, he would be allowed to
 11 see his family. He would and allowed to see a spiritual
 12 adviser, he would be given his last meal.

13 At six o'clock that night, they would come and get him
 14 from that holding cell, take him down a hallway into the
 15 actual death chamber. And in the middle of that room is a
 16 hospital bed. He would be put down on that hospital bed. He
 17 would be strapped to it and intravenous lines would be run
 18 into his arm.

19 Once that was all done, two curtains would be drawn back:
 20 Behind one curtain, he could have up to five members of his
 21 family there, and behind the other curtain, the victim could
 22 have up to five members of his family there to witness the
 23 actual execution.

24 The warden would give Mr. Ruiz a chance to make a final
 25 statement. Once that was done, the warden would give the

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1 go-ahead. Once that was done, a series of three drugs would
 2 be introduced into his body through the I.V. line. The first
 3 to sedate him. The second to collapse his lungs. And the
 4 third to cease up his heart. Whether it took two or three
 5 minutes or five minutes or whatever, at some point in time the
 6 doctor there would go over and check on him and pronounce him
 7 dead.

8 And I don't tell you that to be morbid. And I know you
 9 have had personal, emotional experiences with the capital
 10 murder system here in Texas. But I do tell you to try to
 11 re-enforce in this sterile courtroom what we are talking about
 12 in this case.

13 Going through all that and having said all that, does
 14 that change your mind at all whether or not you would be able
 15 to participate in a proceeding that could result in this man
 16 being executed by lethal injection down at Huntsville down in
 17 the future?

18 PROSPECTIVE JUROR: No.

19 MR. BEACH: All right. Now, you are in the tax
 20 business; is that correct?

21 PROSPECTIVE JUROR: Yes.

22 MR. BEACH: What are your hours right now?

23 PROSPECTIVE JUROR: I have gone -- just gone
 24 back to work after 16 years, so I am working 15 to 20 hours a
 25 week.

1 MR. BEACH: We anticipate that this trial, once
 2 the jury is finally selected, is going to start, it looks like
 3 April the 14th, that would be one day before the 15th,
 4 which I don't know anything about that business, but that kind
 5 of culmination of the tax season?

6 PROSPECTIVE JUROR: It's one culmination.

7 MR. BEACH: Well, we start April 14th, we are
 8 looking at a five-to-eight-day trial, okay. Especially during
 9 the first three, four days, 9:00 to 5:00, you could go home at
 10 night. You could make phone calls during the day, that kind
 11 of thing. The only thing we really can't predict is, how long
 12 a jury is going to deliberate. They could be out 20 minutes,
 13 they could be out a day in terms of reaching a verdict in this
 14 case.

15 Let's say for instance that the evidence is completed,
 16 the arguments are over, the jury goes out to deliberate, seven
 17 o'clock at night, the jury hasn't reached a verdict in neither
 18 stage of the trial. In all likelihood at that time a Judge
 19 would tell them to cease their deliberations, you would be
 20 taken to a hotel, okay with the other jurors. That's a
 21 possibility in this case. Maybe one night possibly two at the
 22 most. With those representations, especially we are talking
 23 about probably April 14th now through, you know 22nd,
 24 23rd something like that. Would you be able to devote your
 25 full attention to a trial of that length in that time frame?

1 PROSPECTIVE JUROR: You can promise it won't
 2 start before April 14th. If it was earlier than
 3 April 14th it would really be hard and a burden on other
 4 people.

5 MR. BRAUCHLE: That's what we are looking at
 6 right now. That's almost set in stone, that's what we are
 7 looking at right now, April 14th trial date, okay?

8 PROSPECTIVE JUROR: Okay.

9 MR. BRAUCHLE: Can you do it?

10 PROSPECTIVE JUROR: I can, I had a tentative
 11 trip that weekend, I haven't bought tickets, so ...

12 MR. BEACH: Don't do it. I tell you that
 13 because from looking at your questionnaire. We have looked
 14 at -- we have been going through this process for about eight
 15 weeks now. And we have looked at a thousand of these things.
 16 And you know if on the first page of your questionnaire you
 17 had circled number one there at the bottom, that you believe
 18 that the death penalty is appropriate in all murder cases, you
 19 wouldn't be qualified to be a juror in this case, because that
 20 is not the law here in Texas. And I think you probably
 21 understand that. If you circled one of these bottom ones,
 22 four, five or six that you don't believe in the death penalty,
 23 that you could never give it or other, you wouldn't be down
 24 here right now. So I guess it is jury tough luck that your
 25 opinion is consistent with what the law is here in Texas.

1 Because you and folks like you are the only people who we have
 2 been talking to. From looking at your questionnaire, your
 3 opinions, aren't out in left field, they are not extreme, they
 4 are pretty much right down the middle. That's why we are
 5 talking to you. And why we are talking to you here this
 6 afternoon, I am going to try to get done as quick as I can.

7 I want to let you know that there is a very real
 8 possibility, probability that you might end up on this jury,
 9 just looking at your questionnaire. So I know that is
 10 probably not good news to you. But I want to really try to
 11 impress upon you while I am talking to you and while the
 12 Defense is talking to you, you are in the firing line. You
 13 are kind of a real possibility in this case, okay.

14 Have you ever been on a jury before?

15 PROSPECTIVE JUROR: No.

16 MR. BEACH: Let me ask you, ma'am, have you ever
 17 felt differently about the death penalty in your adult life?

18 PROSPECTIVE JUROR: No.

19 MR. BEACH: Probably haven't given it a whole
 20 lot of thought. But why do you think we should have the death
 21 penalty?

22 PROSPECTIVE JUROR: I just believe that if
 23 certain violent crimes are committed, that death is
 24 justifiable.

25 MR. BEACH: You answer on page two, the best

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1 argue for the death penalty if a person commits a heinous
 2 crime, they deserve the full punishment. You believe in some
 3 cases they deserve the full punishment for the crime
 4 committed?

5 PROSPECTIVE JUROR: Yes.

6 MR. BEACH: You also agree with the law here in
 7 Texas that again depending on the circumstances, if you murder
 8 a police officer and you know that you are murdering a police
 9 officer while in the line of duty, potentially that's an
 10 appropriate fact situation where a death penalty may be
 11 appropriate; is that correct?

12 PROSPECTIVE JUROR: Yes.

13 MR. BEACH: Let me tell you real quick. It is
 14 only in very limited murder fact situations here in Texas can
 15 the State actually seek the death penalty.

16 If I pulled out a gun right now and shot my co-counsel in
 17 the head and stood over her dead body and laughed about it,
 18 that would be a horrible intentional murder. The most I could
 19 receive here in Texas would be a life sentence, okay. Because
 20 she is not one of the protected classes of individuals that if
 21 you murder them, potentially you might be subjected to the
 22 death penalty. Those classes are like what we are dealing
 23 with here, peace officers in the line of duty. You kill a
 24 prison guard while trying to escape from prison. You kill a
 25 child under the age of six. You killed a person over the age

1 of 65, those are the protected classes of individuals if you
 2 kill one of them, potentially you might get the death penalty,
 3 or like in John's case, two or more individuals were murdered
 4 in that same criminal transaction. That elevated a regular
 5 murder up to a capital murder case where the State could seek
 6 the death penalty. Or in Mary's case, she was murdered while
 7 the defendant was in the course of raping her. If you murder
 8 someone while in the course of committing another very serious
 9 felony, potentially that allows the State to seek the death
 10 penalty. So in your mind do you have a fairly decent
 11 understanding what a capital murder is versus what is called a
 12 regular murder case?

13 PROSPECTIVE JUROR: Yes.

14 MR. BEACH: In a regular murder case, the
 15 legislature has a wide range of punishment anywhere as low as
 16 five years all the way up to 99 years or life. And to be
 17 qualified in that kind of case, you just have to be able to
 18 assure all the parties in the Court that before you hear the
 19 evidence, your mind would be open to the full range of
 20 punishment. If you thought five years after you heard
 21 everything was appropriate punishment in a murder case, you
 22 could give five years all the way up to 99 years or life or
 23 anywhere in between; you understand that?

24 PROSPECTIVE JUROR: (Nods head).

25 MR. BEACH: In a capital murder case, once you

1 are found guilty of a capital murder, there are only two
 2 possible punishments, life without the possibility of parole
 3 or the death penalty. I am going to guess that you have
 4 fairly decent understanding of constitutional rights involved
 5 in a criminal case at the first part of the trial. That is
 6 the only question that the jury has to answer, whether the
 7 defendant is guilty or not guilty.

8 We are talking about the State's burden of proof. We
 9 have to prove our case beyond a reasonable doubt. He is
 10 presumed to be innocent until we prove everything beyond a
 11 reasonable doubt. If he doesn't want to testify, he doesn't
 12 have to, he has a Fifth Amendment right. Judge White
 13 explained those to you when you were down here two or three
 14 weeks ago.

15 And do you have any issues with the basic constitutional
 16 rights would come into play at the first part of the trial?

17 PROSPECTIVE JUROR: No.

18 MR. BEACH: Very quickly, what we have to prove
 19 is on that half page piece of paper. Just take a second to
 20 look at it. What we have to prove is on or about a certain
 21 date in Dallas County, Texas, this defendant knowingly or
 22 intentionally killed that peace officer by shooting him with a
 23 firearm, and he committed that murder. He knew the peace
 24 officer was acting in the line of duty. That's what we have
 25 to prove. We have to prove everything in there.

1 Let me use kind of a farfetched example, all right. If
 2 after you heard all the evidence, you go back to deliberate.
 3 You don't have any questions whatsoever that we have proven to
 4 you beyond a reasonable doubt that the defendant committed the
 5 murder by shooting him with a firearm and he knew the
 6 individual was a peace officer. But you haven't heard any
 7 evidence about where it happened or worse yet, we proved to
 8 you this murder happened in Kaufman County Texas. One the
 9 elements we have to prove in that indictment is it happened in
 10 Dallas County, Texas. Seems like a small thing. We have had
 11 a year now to investigate this case, to word that piece of
 12 paper anyway that we deem fit and the corresponding obligation
 13 in the law is we have to prove everything on that piece of
 14 paper, okay. And if that happens, it would make you and the
 15 other 11 jurors sick to your stomach because you knew you were
 16 letting a murderer go. And we would be fired the next day for
 17 that negligence for not getting the county right. But Judge
 18 White would instruct you and the other 11 jurors that you
 19 would have to find the defendant not guilty because we didn't
 20 prove everything that we had to.

21 Could you and would you find the defendant not guilty?

22 PROSPECTIVE JUROR: Yes.

23 MR. BEACH: It would be hard for you but you
 24 would have to do it?

25 PROSPECTIVE JUROR: Yes.

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1 MR. BEACH: At the first part of the trial, we
 2 either prove it or we don't. At the first part of the trial
 3 if you say by your verdict not guilty, the trial is over and
 4 everybody goes home. We accept that, we accept the burden of
 5 proof in this case. If we don't get the job done, he is free
 6 to go, he is found not guilty. But if we do prove to you
 7 beyond a reasonable doubt everything that we are required to
 8 prove in that indictment, then your oath would require you to
 9 find him guilty.

10 Could you and would you find this defendant guilty if we
 11 proved everything the law requires to you beyond a reasonable
 12 doubt?

13 PROSPECTIVE JUROR: Yes.

14 MR. BEACH: What is the effect of that? Well,
 15 just like we kind of analogize it to a two-act play, ma'am.
 16 At the end of act one, which that would be once you find him
 17 guilty, just like that play, the curtain comes down, comes
 18 down, you are at an intermission. And guess what, you don't
 19 know how the play is going to end, do you?

20 PROSPECTIVE JUROR: No.

21 MR. BEACH: You are going back and watch act
 22 two. That is kind of how a criminal trial is. You don't know
 23 how a criminal trial is going to end just because you have
 24 found someone guilty of capital murder. You have to come back
 25 for act two for the punishment phase where we can present to

1 you additional evidence, all right. That will hopefully
 2 convince you and the other 11 jurors that the death penalty is
 3 the appropriate punishment.

4 Now, some folks -- and maybe the sum and substance after
 5 you got done filling out that questionnaire three or four
 6 weeks ago, you may have walked out of the building thinking if
 7 I find someone guilty of capital murder, it is just automatic,
 8 he gets the death penalty. Really the exact opposite is what
 9 the law is. Simply because you find someone guilty of capital
 10 murder, basically the best they are ever going to do is what,
 11 life in the penitentiary without the possibility of parole.
 12 It is an automatic life sentence without the possibility of
 13 parole, once the jury finds the defendant guilty of capital
 14 murder, life without the possibility of parole.

15 It doesn't matter if he brings peace to the Middle East,
 16 he is never going to get out. Once you are found guilty here
 17 in Texas, the best you will get is life without parole. Just
 18 like instructed at the first part of the trial, you are to
 19 presume him to be innocent. As you go into the second part of
 20 the trial, the punishment part of the trial, the law basically
 21 requires of you and the other 11 jurors that you are to
 22 presume that a life sentence without the possibility of parole
 23 is the appropriate punishment. And not until we bring to you
 24 evidence that convinces you beyond a reasonable doubt that
 25 that life sentence should be elevated up to a death sentence

1 are we entitled to a death penalty in this case.
 2 You understand kind of the scheme and how this works in
 3 that regard?
 4 PROSPECTIVE JUROR: Yes.
 5 MR. BEACH: And you understand there is nothing
 6 automatic what punishment somebody is going to get because
 7 they have been convicted of capital murder?
 8 PROSPECTIVE JUROR: Yes.
 9 MR. BEACH: How do we do that? How do we
 10 elevate a life sentence that he is presumed to be entitled to,
 11 how do we elevate that up to a life sentence? It come by a
 12 jury being confronted with and answering those two questions
 13 up there. Take just a second to read that first question to
 14 yourself, okay?
 15 PROSPECTIVE JUROR: (Juror complies.)
 16 MR. BEACH: Okay.
 17 PROSPECTIVE JUROR: Okay.
 18 MR. BEACH: I think you would agree with me,
 19 what the legislature has intended by asking a jury that first
 20 question there, is before the State is entitled to a death
 21 penalty here in Texas, the jury, the same jury is going to
 22 have to come to two determinations beyond a reasonable doubt.
 23 First of all, that he is guilty of capital murder, and that
 24 would have been determined at the first part of trial, okay.
 25 The second determination the jury is going to have to

1 make is basically we call it the future dangerousness
 2 question. The jury is going to have to be convinced beyond a
 3 reasonable doubt that the defendant is going to be a future
 4 danger, no matter what society he is going to be in, okay.
 5 And not until then, not until the State proves to that jury
 6 beyond a reasonable doubt that the defendant is going to be a
 7 future danger, is that life sentence going to change. The
 8 only way we get a death sentence in this case is we convince
 9 the jury beyond a reasonable doubt that he is going to be a
 10 future danger.
 11 Are you with me so far on that?
 12 PROSPECTIVE JUROR: Uh-huh.
 13 MR. BEACH: How do we do that? We have to prove
 14 to you, really there are kind of three questions in one in
 15 that first special issue. I don't know if when you went to
 16 high school if they still diagrammed sentences or not. But
 17 that's kind of what you have to do on that first question, we
 18 have to prove beyond a reasonable doubt, kind of three
 19 subparts.
 20 The first subpart is, that word probability. We have to
 21 prove to you beyond a reasonable doubt not a possibility, but
 22 a probability, that's the first thing, that he will commit the
 23 second thing, criminal acts of violence, and the third that
 24 would constitute a continuing threat to society. There are no
 25 legal definitions for those three subparts of that first

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1 question. So it is going to be what you and the other 11
 2 jurors determine that the words or phrases mean to you, okay.
 3 Most folks tell us probability mean more likely than not.
 4 If David Finfrock tells you at night it is probably going
 5 to -- possibly going to rain tomorrow, you may take an
 6 umbrella. If he tells you it is a probability, you understand
 7 that you will have to do some more things. The law tells you,
 8 ma'am, that the probability means it has got to be greater a
 9 than 50 percent chance. Whether that means 52 percent or
 10 55 percent, whatever. In your mind that word probability
 11 would have to mean greater than 50 percent.
 12 Could you give it that meaning?
 13 PROSPECTIVE JUROR: I'm sorry.
 14 MR. BEACH: Could you give it at least greater
 15 than a 50 percent chance?
 16 PROSPECTIVE JUROR: I don't know why I am not
 17 hearing.
 18 MR. BEACH: That word probability, could you
 19 give that word probability that meaning that it is at least
 20 greater than 50 percent?
 21 PROSPECTIVE JUROR: Yes.
 22 MR. BEACH: More likely than not, for the
 23 greater chance, okay.
 24 And from there we go to the second part of the sentence
 25 diagram, would commit criminal acts of violence. Again the

1 legislature -- we overword that question. They could have
 2 said commit additional murders or rapes or robberies. They
 3 used that general phrase, criminal acts of violence. Again
 4 there is no legal definition for that phrase, it is going to
 5 be what you believe it to mean and what the other 11 jurors
 6 believe it to mean. We have to convince you beyond a
 7 reasonable doubt that it is more likely than not that he will
 8 continue to commit criminal acts of violence. That tells you
 9 what? Constitutes continuing threats to society.
 10 And that last word, society, I want to talk to you about
 11 it. The legislature again contemplates that the jury's
 12 definition of that word society is going to be broad enough to
 13 include the society that he is going to be in once he is found
 14 guilty of capital murder. What society is that, where is he
 15 going to be the rest of his life once he is convicted of
 16 capital murder?

17 PROSPECTIVE JUROR: In prison.
 18 MR. BEACH: In prison, yeah. So your definition
 19 of that word society, obviously when you first see it, you
 20 think your church, your neighborhood, where you go to work,
 21 the grocery store, again you have to keep it in context to
 22 where he is going to be the rest of his life, unless he
 23 escapes, and that's going to be prison society. And you would
 24 be entitled to hear evidence about prison society. What it
 25 encompasses, what it includes.

1 You will agree with me that there are other classes of
 2 individuals in prison society than inmates; is that true? You
 3 got the guards, you got the administration, medical personnel,
 4 visitors coming in and out of prison, the whole society within
 5 itself. And you would be entitled to hear evidence about what
 6 at that society consisted of and the opportunity to be violent
 7 in that society.

8 And would you consider that type of evidence, ma'am?

9 PROSPECTIVE JUROR: Yes.

10 MR. BEACH: What kind of evidence would be
 11 important to you, ma'am, to help you make that determination
 12 as to whether or not someone would be a future danger to
 13 society, other than the facts of the crime that you found him
 14 guilty of?

15 PROSPECTIVE JUROR: When you were talking
 16 about society and that?

17 MR. BEACH: No, I was talking in general for
 18 that question. What would help you make that determination
 19 whether someone in all probability would be a future danger?
 20 Most folks tell us they want to hear about how the defendant
 21 led his life prior.

22 PROSPECTIVE JUROR: Yeah, any history.

23 MR. BEACH: His history, absolutely. Would that
 24 be important to you, would you be able to consider that kind
 25 of evidence?

1 PROSPECTIVE JUROR: For some reason I was
 2 thinking you couldn't consider that kind of evidence. But
 3 that's what I would want to know.

4 MR. BEACH: Once an individual was found guilty
 5 of a crime. At the punishment phase of the crime, you would
 6 be able to hear basically how he has lived his entire life.
 7 Anything the Judge deemed relevant, you would be able to hear
 8 and the State is entitled to bring you that kind of evidence.
 9 And you think that would be important to you; is that correct?

10 PROSPECTIVE JUROR: Yes.

11 MR. BEACH: You would want to know if this
 12 capital murder is obviously as violent and as serious as it
 13 was, you would want to know was this just an aberration, was
 14 it just some kind of complete break in the way this individual
 15 has led his life up until that day, does everything kind of
 16 conspire and emerge into that one horrible act, or would it
 17 help you to know it was just a part of a pattern in his life,
 18 he has been a criminal basically his entire life and this is
 19 predictable and no one should have been surprised this
 20 happened; is that correct?

21 PROSPECTIVE JUROR: Yes.

22 MR. BEACH: The bottom line, ma'am, is we have
 23 to prove it to you. You have to look to us to prove to you
 24 question number one should be answered "yes" before you could
 25 answer "yes".

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1 You understand that?

2 PROSPECTIVE JUROR: Yes.

3 MR. BEACH: It is our burden just like at the
 4 first phase of the trial, it is our burden to prove everything
 5 to you in this indictment. It is our burden to prove to you
 6 that question number one should be answered "yes" before you
 7 could answer "yes".

8 You with me?

9 PROSPECTIVE JUROR: Yes.

10 MR. BEACH: All right. Really, like we talked
 11 about, as you go into question number one, you are to presume
 12 that a life sentence is the appropriate punishment. Basically
 13 like you spray painted a big "no" at the bottom of that
 14 question, it is not until we bring to you evidence to prove to
 15 you beyond a reasonable doubt that "no" should be erased are
 16 we entitled to a "yes", okay. You got to look to us to do
 17 that.

18 What is the effect of a "yes" answer to question number
 19 one. Well, at that point in time, what has happened? The
 20 first part of the trial, the jury has found the defendant
 21 guilty of capital murder and now they have been convinced
 22 beyond a reasonable doubt this same defendant is going to be a
 23 future danger to society. Once that happens, at that phase of
 24 the trial, the State would be entitled to a death penalty. At
 25 that point the State has elevated that life sentence up to a

1 death sentence because you have found not only is he guilty of
 2 capital murder, but he is a continuing threat to society.

3 You with me?

4 PROSPECTIVE JUROR: Yes.

5 MR. BEACH: Is the play over yet? Not quite.
 6 You got one more question to answer before the final curtain
 7 comes down. And that's that second special issue. Take just
 8 a second to read that to yourself?

9 PROSPECTIVE JUROR: (Witness complies.)

10 MR. BEACH: All right. That one is a little
 11 trickier, especially that phrase personal moral culpability,
 12 mitigating circumstance. But like we paraphrased the first
 13 question, would be kind of the future dangerousness question.
 14 The second question we characterize it as the safety-net
 15 question or the safety-valve question. You have to
 16 understand, ma'am, when you get to that question, now the
 17 defendant is sitting on a death sentence. He has earned a
 18 death sentence in the mind of the 12 jurors. But the
 19 legislature, I believe, with this question is contemplating
 20 before that death sentence is etched in stone for all time,
 21 they want that same jury to go back, look at all the evidence
 22 in this case. Look at his background, his character, the way
 23 he was brought up, his mental capabilities, the facts of the
 24 offense. And if there is a sufficient mitigating
 25 circumstance, if there is something in the evidence that to a

1 jury's mind convinces them that there is something
 2 sufficiently mitigating that lessens his moral blameworthiness
 3 or reduces his personal moral culpability to the point where
 4 they believe that even though he has earned a death sentence,
 5 a life sentence out of mercy is the appropriate punishment.
 6 And this questions gives them the right to do that; you
 7 understand that? That's why we call it the safety-net
 8 question.

9 Folks sitting up there where you are sitting have told
 10 us, you know, his family background may potentially be a
 11 mitigating circumstance, again depending on the facts. If you
 12 hear evidence from the age of two on, you know the defendant
 13 was kept in a closet by his parents, tortured, physically and
 14 sexually abused, basically had no chance in life, even though
 15 he is a convicted capital murderer and even though he is going
 16 to be a future dangerousness, that might be one of those
 17 sufficient mitigating circumstances that would cause me out of
 18 mercy to take that death sentence back to a life sentence.

19 Some folks have told us -- again we can't execute
 20 mentally retarded folks in this country, okay. There are some
 21 folks right on the cusp of mental retardation. Very low I.Q.,
 22 mental issues that don't amount to insanity, but have mental
 23 issues. Again that could be a sufficient mitigating
 24 circumstance again that could convince that individual juror
 25 to take the death sentence back to a life sentence.

1 We can't commit you to any mitigating circumstance. But
 2 ma'am, could you, if you were of the mind after you did that
 3 review of the evidence one last time, was something
 4 sufficiently mitigating in this defendant's background, his
 5 character, the facts of the offense, even though you believed
 6 the defendant earned a death sentence, could you take that
 7 death sentence back to a life sentence if you were convinced
 8 that was the appropriate thing to do under the evidence?

9 PROSPECTIVE JUROR: Yes.
 10 MR. BEACH: It's hard to talk, you know
 11 hypotheticals and theoreticals right now. But you get the
 12 gist of what that question is giving you the opportunity to
 13 do. Basically it is giving you the opportunity to show mercy
 14 even though you believe the defendant is worthy of a death
 15 penalty, they are a convicted capital murderer now, they are a
 16 future danger now; but you believe that there is something
 17 there that justifies to your way of thinking in this one case
 18 life is more appropriate than death, that question there is
 19 giving you the opportune to do that. And could you and would
 20 you do that if you were convinced that was the right thing to
 21 do?

22 PROSPECTIVE JUROR: Yes.
 23 MR. BEACH: I have been doing a lot of talking,
 24 I appreciate you staying with me. Is there anything that I
 25 confused you on, anything about your responsibility as a juror

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1 in this case that you think we need to know about or you have
 2 any questions?

3 PROSPECTIVE JUROR: No.

4 MR. BEACH: I appreciate you coming down here,
 5 ma'am. Thank you very much.

6 THE COURT: Thank you, Mr. Beach.

7 Ms. Conradt do you need a break first?

8 PROSPECTIVE JUROR: If I can just get a drink of
 9 water real quick.

10 THE COURT: Let's take a five-minute break. We
 11 will be in recess.

12 (Recess taken.)

13 (Prospective juror entered the courtroom.)

14 THE COURT: Mr. Johnson or Mr. Brauchle, you may
 15 proceed.

16 MR. BRAUCHLE: Thank you, Your Honor.

17 VOIR DIRE EXAMINATION

18 BY MR. BRAUCHLE:

19 Ms. Conradt, I have been introduced to you. My name is
 20 Paul Brauchle. And I don't think I am going to take as much
 21 of your time as the State did. Not because we think what we
 22 have got to say is less important, but I don't think you want
 23 to hear it over and over again.

24 Let me just ask you about a couple of things. You say
 25 that your sister was the roommate of that woman that you knew

1 that got killed; is that correct?

2 PROSPECTIVE JUROR: Not while she was killed, in
 3 college, this was after college, but they had been roommates
 4 in college.

5 MR. BRAUCHLE: They had been roommates in
 6 college?

7 PROSPECTIVE JUROR: Not at the time.

8 MR. BRAUCHLE: When she lived here in Dallas?

9 PROSPECTIVE JUROR: No.

10 MR. BRAUCHLE: Have you thought about anything
 11 that Mr. Beach talked to you about or any of your answers or
 12 anything like that in regard to the questionnaire of what we
 13 have talk to you about?

14 PROSPECTIVE JUROR: Do I have any more
 15 questions.

16 MR. BRAUCHLE: You went back, you got off the
 17 stand and went back and got some water, I hope, and we are
 18 just wondering if you thought of something you may have
 19 answered wrong or you may have a question about or anything
 20 like that?

21 PROSPECTIVE JUROR: There was little thing that
 22 I answered wrong, I went back and looked back. I didn't put
 23 my husband's name, things like that. He has been on a jury
 24 before, I didn't know it, when asked him.

25 MR. BRAUCHLE: You know what kind of jury he was

1 on?

2 PROSPECTIVE JUROR: It was -- I don't know. It
3 was theft or something, it was don't in three hours, I don't
4 know what it was.

5 MR. BRAUCHLE: You say he was down here three
6 hours?

7 PROSPECTIVE JUROR: The trial was about three
8 hour was what he said. When I asked him.

9 MR. BRAUCHLE: Okay. So it wasn't such a great
10 period in his life, you didn't need to talk about it?

11 PROSPECTIVE JUROR: I didn't even know about it
12 so.

13 MR. BRAUCHLE: Let me just ask you, Mr. Beach
14 was talking to you about having to prove all of the elements
15 of the indictment beyond a reasonable doubt. We used the
16 example of the county, because that's kind of easy for jurors
17 to understand and to get a grip on. And I know when he asked
18 you if you could find somebody not guilty because the State
19 had proven either the wrong county or had not given you any
20 information as to which county it occurred in, you kind of
21 hesitated. I was wondering if you had a problem with that
22 concept or if you didn't understand what he was asking you or
23 what?

24 PROSPECTIVE JUROR: I guess I am just not used
25 to being in a room with this many people looking at me, and I

1 just want to make sure I understand and just -- I don't know,
2 it is very intimidating to me. And I was just thinking about
3 the question and could I do it and --

4 MR. BRAUCHLE: Well, basically what the gist of
5 it means is that if you find that the State didn't prove one
6 of the elements of the indictment, whichever one or more of
7 them, basically the person on trial in theory would be getting
8 on the elevate with you and the other jurors because the State
9 would have failed to prove him guilty. And a lot of people
10 say, Well, something like the county, that's just a
11 technicality, if I knew the guy did what he was charged with,
12 it was just because some prosecutor overlooked something or
13 didn't know how to get it in evidence or whatever, I couldn't
14 in good conscience go back and tell my friends and family in
15 the neighborhood that I let somebody go simply because the
16 people at that table over there weren't smart enough or
17 weren't equipped enough to get in what county it happened in.
18 And I just wondered -- say you seemed to hesitate, I was just
19 wondering if you had any problem with that. I know we all
20 have a problem in theory, we wouldn't want to see it happen.
21 But we also have to be able to say, well, if it did happen, I
22 could follow the Judge's instructions and I could vote the
23 person not guilty, could you do that?

24 PROSPECTIVE JUROR: Yes. I mean I believe the
25 law, you know, comes before human error, I guess. And you

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1 can't start picking and choosing, so it would be difficult.

2 MR. BRAUCHLE: Well, we realize that it would be
3 very difficult. But it is like you say, we can't say the
4 county is not important but this is important. It's
5 unfortunately all of them have equal importance. They may not
6 seem like it, but we have to give they all equal importance
7 whether we like it or not. But you can live with that, right?

8 PROSPECTIVE JUROR: Yes.

9 MR. BRAUCHLE: Okay. You also understand that
10 that kind of goes to the linchpin of everything that State has
11 to prove. They have to prove each and everything that is in
12 the indictment, in these questions. Well, in the first
13 question. And in any other part of the trial beyond a
14 reasonable doubt; you understand that?

15 PROSPECTIVE JUROR: Yes.

16 MR. BRAUCHLE: And that burden always remains
17 with them, and the people at this table have no burden of
18 proof. We don't have to prove anything did or didn't happen
19 beyond a reasonable doubt. They always have to prove that it
20 happened beyond a reasonable doubt. All right.

21 You think that's an unfair burden for the State to have
22 to do that?

23 PROSPECTIVE JUROR: I mean I guess I don't think
24 it matters, it's the law, and you know, it does seem sort of
25 unfair that one side has to and the other doesn't. It's the

1 law, I understand that part of it.

2 MR. BRAUCHLE: So it is nothing that would cause
3 you any problems on any level, right?

4 PROSPECTIVE JUROR: It is not a problem -- I
5 mean, at any level, yes, I mean emotionally, but in applying
6 the law, no.

7 MR. BRAUCHLE: Okay. Now, then, as Mr. Beach
8 told you, most people that after they fill out the
9 questionnaire, think that the automatic sentence for somebody
10 found guilty of capital murder is death. And he explained to
11 you that in fact that the automatic sentence is life imprison
12 without parole. And only if special issue number one is
13 answered "yes" and if special issue number two is answered
14 "no", does death result.

15 And I think you understood that, said you didn't have any
16 problem with that; is that correct?

17 PROSPECTIVE JUROR: Yes.

18 MR. BRAUCHLE: You understand that basically the
19 way this system is set up, life without parole is always the
20 default punishment? In other words, if the State fails at any
21 step of the punishment phase, life without parole is what
22 results. So it always -- they never get better than life
23 without parole. It is not like if the State doesn't prove
24 something in either of these two issues, they don't go home
25 like they would in the first part of the trial. But they

1 could never get better than life without parole.
 2 Let me talk to you briefly about special issue number
 3 one. The word up there probability, that we have been advised
 4 by the Courts has to mean more than 50 percent. And I guess
 5 you can see that if it was 50/50, that means it really
 6 wouldn't be much of a question, because it could happen or
 7 couldn't happen, there is no signing of the eventuality or the
 8 chance or whatever that it would happen. We would like to
 9 think, though, with the Courts telling us that it is at least
 10 50 percent, you notice that right in front of it, is the
 11 reasonable doubt, beyond a reasonable doubt that the State has
 12 to prove.

13 And we are asking you if in looking at that, when you see
 14 that probability is in close proximity of reasonable doubt,
 15 would that make you think -- or would that make you look to
 16 the numerical assignment or the numerical quantification for
 17 probability or would that make it higher than 50 percent, and
 18 if it does, would it be very much higher, can you follow that?

19 PROSPECTIVE JUROR: I done know if it is late or
 20 what, but not really. Are you saying just a reasonable doubt
 21 make it?

22 MR. BRAUCHLE: Well, you see that they have to
 23 prove to you beyond a reasonable doubt that there is a
 24 probability?

25 PROSPECTIVE JUROR: Right.

1 MR. BRAUCHLE: Now, a probability only means
 2 50 percent, we would think that most people would think
 3 reasonable doubt means more than 50 percent. I would think
 4 that if the State had to prove a criminal case to you beyond a
 5 reasonable doubt, that it would have to be something more than
 6 a 50/50 chance that the person is guilty, would you agree with
 7 me on that?

8 PROSPECTIVE JUROR: Yes, I mean if that -- yeah.
 9 MR. BRAUCHLE: Okay. So I guess what I am
 10 asking, and I am not doing it very well, but I am asking if
 11 the fact that reasonable doubt is the criteria for that
 12 question, does that raise probability in your mind to a level
 13 greater than 50 percent?

14 PROSPECTIVE JUROR: I guess I just wouldn't
 15 think of it that way.

16 MR. BRAUCHLE: How would you think of it?
 17 PROSPECTIVE JUROR: I don't know. I am just
 18 looking at is there a reasonable doubt that is greater than
 19 50 percent. If it is 51 percent it is still 51 percent and I
 20 have already come to the conclusion that I do or don't have a
 21 reasonable doubt about that.

22 MR. BRAUCHLE: Okay. So you could be satisfied
 23 beyond a reasonable doubt that there is a probability the
 24 defendant would commit criminal acts of violence in the future
 25 and it would constitute a continuing threat to society and

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1 probability in that question could mean as little as
 2 51 percent for you?

3 PROSPECTIVE JUROR: Yes.

4 MR. BRAUCHLE: Would it ever mean more than
 5 51 percent?

6 PROSPECTIVE JUROR: It could, yes.

7 MR. BRAUCHLE: Okay. Let me ask you this about
 8 question number one. For all the twist and turns and
 9 reasonable doubt and probability and continuing threat to
 10 society and all the phrases that are involved in there, would
 11 you agree that basically what that question is asking you is,
 12 is this person so dangerous that the only way that we can
 13 control his future behavior is by killing him?

14 PROSPECTIVE JUROR: I don't want to reword what
 15 you said, I look at it like I said that's the law if I
 16 determine that's that probability, then the law allows that.

17 So I would guess, yes, I agree with what you said then. He is
 18 going to be so dangerous that that would be --

19 MR. BRAUCHLE: Well, you see that whole question
 20 goes on that he is going to commit criminal acts of violence
 21 and those criminal acts are going to be such that they will
 22 constitute a continuing threat to society. So it is not -- it
 23 is not saying, well, it may be to you, we don't know, they are
 24 not saying it is an isolated incident because he is going to
 25 be a continuing threat to society. So they are asking you to

1 predict what we call that question is the future dangerousness
 2 question. Is he going to be a danger in the future? If he
 3 is, you answer that "yes". You understand he gets death. If
 4 you don't think that he is going to be a danger in the future,
 5 he gets life without parole. So I guess that was -- that's
 6 the question I have in regard to trying to simplify special
 7 issue number one.

8 You see it that way?

9 PROSPECTIVE JUROR: Would you say again?

10 MR. BRAUCHLE: I don't think I can, ma'am.

11 PROSPECTIVE JUROR: Just part -- yes, I agree
 12 with that, because they would be a continuing danger -- a
 13 continuing threat, then, yes, that's appropriate punishment.

14 MR. BRAUCHLE: Okay, let me back up and do it
 15 real quick. That question is asking you as we say in the
 16 shorthand, are they going to be a future danger? It is
 17 conceded that they were a danger at the time they committed
 18 the act. But we are trying to predict the future. And we are
 19 trying to see are these people going to be a danger to society
 20 in the future, even if they are going to be imprison. If they
 21 are going to be a danger in the future, even if they are
 22 imprison, the way we can control that danger is kill them.
 23 Otherwise you know that if that is answered "no", they remain
 24 in prison under life without parole sentence, is that the way
 25 you see that question?

1 PROSPECTIVE JUROR: Yes.
 2 MR. BRAUCHLE: Asking you. Do you have any
 3 quarrel with that concept?
 4 PROSPECTIVE JUROR: I don't have a quarrel with
 5 the concept. It may be hard to apply. I mean to know how to
 6 apply, I guess that's what would be difficult.
 7 MR. BRAUCHLE: Let me just ask you this, you
 8 think everybody that is convicted of capital murder would be a
 9 danger in the future?
 10 PROSPECTIVE JUROR: If I had to answer, yes or
 11 no, I would probably say, yes.
 12 MR. BRAUCHLE: Okay.
 13 PROSPECTIVE JUROR: Knowing there are some
 14 different circumstances, I mean you can't apply one answer to
 15 everything, but...
 16 MR. BRAUCHLE: Well, it would -- let me make the
 17 question that I asked you a little bit more fair. You
 18 understand that there is a lot of different people that would
 19 be found guilty of murder and the circumstances of each
 20 capital murder would be different; would you agree with me on
 21 that?
 22 PROSPECTIVE JUROR: Yes.
 23 MR. BRAUCHLE: And while neither side has to
 24 prove the reason that somebody was murdered and the reason
 25 somebody committed a capital murder, some of them might be

1 less heinous or less aggravated than others; would you agree
 2 on that?
 3 PROSPECTIVE JUROR: Yes.
 4 MR. BRAUCHLE: I don't want you agreeing just
 5 because it is getting late and you want to get back to
 6 Coppell, but can you see the point that I am trying to make on
 7 that?
 8 PROSPECTIVE JUROR: Yes.
 9 MR. BRAUCHLE: Let's go to special issue number
 10 two. I think this one may cause you a little more trouble.
 11 You stated that in regard to special issue number one, that
 12 that might be hard for you to apply in regard to predicting
 13 the future, future danger. In special issue number two, it is
 14 kind of other worldly question. And it asks you look, you
 15 don't answer unless you have already answered special issue
 16 number one that they are going to be a danger in the future.
 17 Now we want you to look over all the evidence that you have or
 18 haven't gotten and find if there is something about that
 19 person's personal moral culpability or his character or his
 20 background that makes you think that even though you may have
 21 answered special issue number one "yes", that sentence of life
 22 imprisonment without parole should be imposed. A lot of
 23 people sitting where you are say, That's stupid. Why would I
 24 want to let somebody off the hook if I had already determined
 25 beyond a reasonable doubt that he is going to be a future

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1 danger? And I think it goes back to what I discussed with you
 2 previously. There is a lot of different circumstances in
 3 which a murder can be committed. There is a lot of different
 4 people personality wise, intelligence wise, background wise,
 5 other things that you can see may not be answered in regard to
 6 special issue number one.
 7 Can you see that or do you believe that?
 8 PROSPECTIVE JUROR: I believe that. I think it
 9 would be slim, but I do agree there are some circumstances.
 10 MR. BRAUCHLE: Okay. We are not saying that
 11 there are going to be a multitude of reasons one way or
 12 another.
 13 Mr. Beach mentioned some people that may be extremely low
 14 intelligence, they can't be retarded because they can't be
 15 tried if they are retarded. You understand there are all
 16 sorts of mental make up and other personal background that may
 17 militate for you answering that to where it would go back.
 18 Once again putting them -- answer that no doesn't let them out
 19 of prison, it just put them -- it is that default, it just
 20 puts them back in with life without parole.
 21 You have any quarrel with that concept?
 22 PROSPECTIVE JUROR: No.
 23 MR. BRAUCHLE: If the evidence was there, do you
 24 think that you could -- that you could answer that in such a
 25 way that a person wouldn't get the death penalty?

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1 PROSPECTIVE JUROR: Yes.
 2 MR. BRAUCHLE: I take it, though, that you --
 3 that would cause you quite a bit of soul-searching and fact
 4 searching to come up with a "no" answer in regard to that?
 5 PROSPECTIVE JUROR: Yes.
 6 MR. BRAUCHLE: Are you telling us and our client
 7 if the evidence were there, you could in fact answer that
 8 question "no"?
 9 PROSPECTIVE JUROR: If the evidence was there,
 10 yes.
 11 MR. BRAUCHLE: Basically that's got to be the
 12 way you answer any question all the way through the trial, the
 13 evidence has to be there one way or another.
 14 Ma'am, I think you will be happy to know that I don't
 15 have any more questions for you. You can rest.
 16 THE COURT: Thank you, Mr. Brauchle.
 17 MR. BRAUCHLE: Thank you, Your Honor.
 18 THE COURT: Ms. Conradt, you can step down
 19 again.
 20 PROSPECTIVE JUROR: Okay.
 21 (Prospective juror retired from the courtroom.)
 22 (Pause in the proceedings.)
 23 (Prospective juror entered the courtroom.)
 24 THE COURT: Ms. Conradt, I will let you know
 25 that there are no questions to be asked of you. We are going

1 to let you go today and we will notify you by Friday if you
2 have been selected as a juror in this case. Because there is
3 a probability that you may make it to the jury, I will ask
4 that you not research the case on the internet. If you see it
5 on the media, just change the channel or don't read any
6 articles in the newspaper and we will let you know by Friday.

7 PROSPECTIVE JUROR: By phone I guess?

8 THE COURT: Yes, by phone.

9 MR. BEACH: Unless you want to come back down?

10 PROSPECTIVE JUROR: No, thank you.

11 THE COURT: Thank you.

12 (Prospective juror retired from the courtroom.)

13 (Court recessed for the day.)

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1 THE STATE of TEXAS)
2 COUNTY of DALLAS)
3 I, BELINDA G. BARAKA, Official Court Reporter in and
4 for the 194th Judicial District Court of Dallas County, State
5 of Texas, do hereby certify that the foregoing contains a true
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